

“Compliance with judgments of the European Court of Human Rights in the Russian Federation”



Candidate number: 8009

Supervisor: Claire Hubert

Deadline for submission: September 30, 2007.

Number of words: 16 240

Department of Public and International law

Faculty of Law

University of Oslo

28.09.2007

Acknowledgements

I would like to use this opportunity to express my special gratitude to my supervisor Claire Hubert for her valuable suggestions and critical comments which clarified my thoughts and helped me to finish my work. I'm very grateful for her patience throughout all time while I was writing my thesis.

Many thanks to the librarian staff of the Department of Public and International law and the Norwegian Centre for Human Rights, particularly, to Marta Herkenhoff for helping me to find the relevant books for the thesis.

I'm thankful to the research fellows Bruno Demeyere and Roemer Lemaître for their encouragement and support.

I also would like to express my gratitude to the Human Right House Foundation, particularly, to Ane Tusvik Bonde and Luidmila Ulyashina and to the Professor of Law of the University of London Bill Bowring for providing information for finding the relevant material for the thesis.

Finally, I would like to thank my husband Thor Stefan Sørby for formatting this paper and giving me useful advises.

Nurzada Abdumajitova

Table of contents

Acknowledgements.....	i
Table of contents	ii
INTRODUCTION	1
1.1 Presentation of the topic.....	1
1.2 The purpose of the thesis.....	1
1.3 Supervisory organ.....	2
1.4 Sources and methodology.....	4
1.5 The use of terms.....	5
1.6 The structure of the thesis.....	5
2 INTERNATIONAL LEGAL FRAMEWORK	7
2.1 International obligation to comply with judgments of the Court and the State responsibility	7
2.2 Rules of the Committee of Ministers.....	8
2.3 Just Satisfaction	11
2.4 Individual measures	13
2.4.1 <i>Shofman</i> case.....	15
2.4.2 <i>Chechen</i> cases	16
2.4.3 The case of <i>Ilaşcu and others</i>	17
2.5 General measures	20
2.5.1 <i>Kalashnikov</i> case.....	21

2.5.2 <i>Ryabykh</i> case	23
2.5.3 <i>Znamenskaya</i> case	24
3 IMPLEMENTATION OF JUDGMENTS IN THE NATIONAL LEGAL SYSTEM OF THE RUSSIAN FEDERATION	26
3.1 International law and national law	26
3.2 Legal grounds for implementation of the Court's judgments	26
3.3 Execution of the Court's judgments in the Russian Federation.....	27
3.2.1 Payment of just satisfaction	28
3.2.2 Reopening of domestic procedures	29
3.2.3 Systematic violations of the Convention.....	31
3.4 Case law of the Court and national jurisprudence	38
3.4.1 Implementation of the Court's judgments in the national courts	38
3.4.2 Application of the Convention and the Court's case law in the judicial practice of the Russian courts	39
4 FAILURE TO ABIDE BY JUDGMENTS AND DECISIONS.....	42
4.1 Obstacles on the execution of judgments and decisions	42
4.2 Non-compliance with judgments and decisions	45
5 SUMMARY AND CONCLUSION	47
BIBLIOGRAPHY:	49

Introduction

1.1 Presentation of the topic

The judgments of the European Court of Human Rights (hereafter “the Court”) are final if the cases are not appealed and referred to the Grand Chamber within three months.¹

Article 46 of the Convention sets forth an obligation to comply with a judgment of the Court in any case to which the Contracting State is a party. The obligation stemming from the judgment of the Court falls into three categories: just satisfaction, individual measures and general measures.² Implementation of these measures in the national legal order is necessary to fulfil the primary task of the Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “the Convention”) to secure the rights and freedoms of everyone within their jurisdiction.

The topic of the thesis is the implementation of the Court’s judgments in the Russian Federation. I have chosen to focus on this particular country because of the history of its acceptance to the Council of Europe. The Russian Federation was accepted to the Council of Europe despite the fact that its legislation, except its Constitution and its law enforcement practice, did not comply with the Council of Europe's standards on human rights.³ It would be interesting to see the progress that has been achieved by the Russian Federation in its compliance with the judgments of the Court.

1.2 The purpose of the thesis

The intention of this thesis is to demonstrate to what extent the Russian Federation complies with the judgments of the Court. The paper attempts to examine the following aspects:

- Legal grounds for the implementation of the Court's judgments;
- Individual and general measures for the proper execution of the Court's judgments;

¹ Judgments of the Grand Chamber are final. See Article 44 §1 of the Convention.

² More information on these measures will be provided in second part (Chapter 2) of the thesis.

³ The Explanatory Note on the Issue of Signing the European Convention for the Protection of human Rights and Fundamental Freedoms by the Russian Federation, January 30, 1996.

- Accomplishments and problems of the Russian Federation in the execution of the Court's judgments;
- Consequences of non-execution of the Court's judgments.

1.3 Supervisory organ

The Court considers itself not in the position to issue certain orders to the state party.⁴ The Court has repeatedly declared that it lacks jurisdiction to direct the States to take certain measures, noting regularly, that it is left to the State concerned to choose the means within its domestic legal system to give effect to its obligation under Article 46⁵. The Court refers to the responsibility of the Committee of Ministers, which is an executive organ of the Council of Europe, by the virtue of Article 46§2 of the Convention, to supervise the execution of the Court's judgments. The Court seems to emphasise that according to Article 46§2 the Committee of Ministers is empowered to give direction to the Governments concerned. Thus, the Committee of Ministers, as a supervisory organ, plays an important role in the execution of the judgments.⁶

The Committee of Ministers is composed of the Foreign Ministers of all member States of the Council.⁷ Each of the member States is entitled to one representative on the Committee and each representative is entitled to one vote. Usually, the Ministers meet only four times a year. Article 20 (b) of the Statute of the Council of Europe governs the Committee's voting procedures. A quorum consisting of the representatives of the two-thirds of the member States is necessary before any meeting can proceed. A simple majority of all the member States and a two-thirds majority of all the States present at the meeting are required to adopt a resolution or an interim resolution.⁸

The day-to-day work of the Committee of Ministers is normally carried out by the Deputies (the Ambassadors of the member States). The Deputies are empowered to deal with all matters within the competence of the Committee of Ministers and to take decisions on its behalf. Decisions taken by the Deputies have the same authority and effect as decisions taken by the Committee of Ministers meeting at the level of the Ministers for

⁴ Tom Barkhuysen & Michiel van Emmerik “*Improving the implementation of Strasbourg and Geneva decisions in the Dutch legal order: reopening of closed cases or claims of damages against the state*”, 1999, p.6.

⁵ See *Tolstoy Miloslavsky v. the United Kingdom*, judgments of 30 October 1995 §69-72 or *Paramichalopoulos and Other v. Greece*, judgment of 31 October 1995 §34.

⁶ Since the amendment of Protocol 11, the supervision of the execution of the Court’s judgments has become the sole task of the Committee of Ministers.

⁷ Article 14 of the Statute of the Council of Europe.

⁸ Cameron I., *An Introduction to the European Convention on Human Rights*, 2006, p.64-66.

Foreign Affairs. The Deputies do not, however, take decisions on any matter that, in the view of one or more of them, due to its political importance should be dealt with by the Committee of Ministers meeting at the ministerial level.⁹

The Committee has received considerable assistance from its own Secretariat and from the Secretariat of the Human rights Directorate, responsible for preparing each file and for liaising with relevant State authorities in respect of each case prior to the Committee's Human rights meetings. The Committee gets, in addition, an essential help from the Department for the Execution of Judgments, which was reinforced in 2006 in order to avoid slow or negligent execution of judgments of the European Court of Human Rights.¹⁰

Article 17 in the Statute of the Council of Europe provides for still another tool for the Committee of Ministers in fulfilling its supervisory power. Under this article, the Committee may set advisory or technical committees or commissions if it deems this desirable in order to take evidence and conduct tasks within the context of its function under the Convention.

The Committee of Ministers regularly informs the Parliamentary Assembly of the Council of Europe (hereafter “the Assembly”) of significant developments in the area of execution of the judgments of the European Court of Human Rights. The involvement of the Assembly in the task of supervising the execution of judgments is the result of a gradual process and is now exercised according to a number of methods¹¹ The Assembly has increasingly contributed to the process of implementation of the Court’s judgments. Seven reports¹² and six resolutions¹³ and five recommendations¹⁴ specifically concerning the implementation of judgments have been adopted by the Assembly since 2000. In addition, various implementation problems have been regularly raised by other means, notably through oral and written parliamentary questions.¹⁵ A number of complex implementation issues have been solved with the assistance of the Assembly and of the

⁹ Article 2 of the “Rules of procedure for the meetings of the Ministers Deputies, adopted by the Committee of Ministers at its Sixteenth Session at 4-5 July 1955, 4th revised edition, 2005.

¹⁰ See CM/Inf/DH(2006)9rev3E / 24 November 2006 “Working methods for supervision of the execution of the European Court of Human Rights' judgments” with explanation of the work carried out by Secretariat and Department for the Execution of Judgments.

¹¹ For more information, see Resolution 1226 (2000) of the Parliamentary Assembly of the Council of Europe on 28 September 2000.

¹² Reports (Doc. 8808 of 12 July 2000; Doc. 9307 of 21 December 2001; Doc. 9357 of 5 September 2002; Doc. 9357 of 21 September 2002; Doc 10192 of 1 June 2004, Doc. 10 351 of 21 October 2004; Doc.11020 of 8 September 2006) of the Parliamentary Assembly of the Council of Europe.

¹³ Resolutions - 1226 (2000); 1268 (2002); 1297 (2002); 1381 (2004); 1411 (2004); 1516 (2006) of the Parliamentary Assembly of the Council of Europe.

¹⁴ Recommendations -1477(2000); 1546(2002); 1576(2002); 1684(2004); 1764(2006) of the Parliamentary Assembly of the Council of Europe.

¹⁵ See Parliamentary Assembly’s resolutions on the execution of judgments of the European Court.

national parliaments and their delegations to the Assembly. The Assembly's involvement seeks to give its members more responsibility in respect of the international commitments of their own governments.

1.4 Sources and methodology

The thesis is based on sources of international law and municipal law.

The “*primary*” sources of international law which are employed in the thesis are international treaties and customary international law.¹⁶ The treaties that are highlighted in this work are the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁷, the Statute of the Council of Europe (hereafter “the Statute”)¹⁸ and the Vienna Convention on the Law of Treaties (hereafter “the Vienna Convention”).¹⁹ The latter from the above-mentioned treaties is an authoritative codification of customary international law.

As sources envisaged in international treaties, in this occasion, in the Convention and in the Statute, the thesis employs the Rules of the Committee of Ministers and the binding judgments of the Court, which are called “*secondary*” sources of international law.²⁰

In addition, the thesis examines provisions of the Constitution and federal law of the Russian Federation which are relevant to the execution of individual and general measures which are commonly required to take in the process of complying with the Court's judgments. Furthermore, the thesis provides a short review of the judicial practice of the Russian courts concerning the topic of the thesis.

This work was conducted through library research as well as analysing materials presented in different web pages. Namely, resolutions and other documents of the Committee of Ministers, case law of the Court, resolutions of the Parliamentary Assembly of the Council of Europe, information found in research paper of the Russian non-governmental organizations “Demos” and “Sutyajnik” concerning implementation of the Court's judgments in the Russian Federation and publications of the Institute of Human Rights in the Russian bulletin on human rights (Russian version). Detailed information on internet web sites is given in the bibliography.

¹⁶ The presentation of the sources of international law can be found in Article 38 §1 of the Statute of the International Court of Justice.

¹⁷ Adopted on November 4, 1950, in force September 3, 1953.

¹⁸ Adopted on May 5, 1949.

¹⁹ Adopted on May 23, 1969, in force January 27, 1969.

²⁰ See Cassese A. “*International Law*” (2005) p.184-197.

It is also necessary to mention that due to lack of information in English concerning the actual implementation of the Court's judgments in the Russian Federation, most of the materials including some of the legislation of the Russian Federation were translated by the author of this thesis.

1.5 The use of terms

The application of the word “obligation” in this paper refers to the legal commitment of a State under treaties and/or customary international law. The phrase “state responsibility” has the same meaning as provided for in the International Law Commission draft articles on International Responsibility of States.²¹ Article 1 and Article 2 of the draft articles read together imply that international responsibility of States is the consequence of failure of States to carry out their obligations under international law.

The term “*restitutio in integrum*” refers to the principle of international law which implies re-establishment of the same position which the party enjoyed prior to the violation (restoration to original condition).

1.6 The structure of the thesis

This work consists of four parts. After the introductory part, Chapter 2 provides for the legal basis for compliance with the Court's judgment. This includes the requirements of the notions of just satisfaction, individual and general measures. Application of these measures is illustrated through selected judgments of the Court against the Russian Federation with information on the realization and developments of the above mentioned measures in respect to each of those judgments.

Chapter 3 presents the legal grounds for the implementation of the judgments in the Russian Federation and discusses the process for execution of those measures introduced in Chapter 2 in the national legal order. Particularly, it provides information on financial compensation under Article 41 of the Convention, reopening domestic judicial procedures as well as on systematic violations of the Convention and judicial practice in the Russian Federation.

Finally, the last part (Chapter 4) tries to identify obstacles and problems in the Russian Federation that hinder the proper execution of the Court's judgments and the

²¹ See International Law Commission draft articles on Responsibility of States for International Wrongful Acts- August 10, 2001.

decisions of the Committee of Ministers. It further presents consequences of the State's failure to abide by the judgments. This contribution ends with a brief summary and conclusion.

2 International legal framework

2.1 International obligation to comply with judgments of the Court and the State responsibility

Under Article 1 of the Convention a Contracting State is bound to secure within its jurisdiction the rights and freedoms set forth in Section 1 of the Convention. To the extent that a State has ratified any of the protocols No 1, 4, 6, 7, 12 and 13, this obligation also applies to the rights and freedoms laid down in these Protocols containing additional provisions to which all the provisions of the Convention apply accordingly.

Article 46 “Binding force and execution of judgments”, paragraph 1 provides:

“The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties”.

As it was noted previously, the Court does not indicate the measures which need to be taken in order to execute the judgment. The judgment of the Court leaves to the State the choice of the means to be used in domestic legal order to give effect to its obligation under Article 46.²²

In *Papamichalopoulos* case²³ the Court stated that:

“a judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such way as to restore as far as possible the situation existing before the breach”.

In the *Scozzari and Giunta* case²⁴ the Court provided:

“a judgments finding a violation imposes on the respondent State a legal obligation not just to pay those concerned the sum awarded by the way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general

²² *Belilos v. Switzerland*, judgment of 29 April 1988, §78. See, also Zwaak L. *Implementation of decisions of the supervisory organs under the European Convention on Human Rights* (1999) p. 80.

²³ *The Paramichalopoulos and Other v. Greece* judgment (art. 50) of the 31 October 1995, § 34.

²⁴ See *The Scozzari and Giunta v. Italy* judgment of 13 July 2000.

and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effect...”.

These statements of the Court bring to the conclusion that the State which failed to fulfill its obligation under Article 1 the Convention, is responsible to put an end to the violation, to make reparation (*restitutio in integrum*) and to guarantee non repetition of the breach by adoption of individual and general measures.

By accepting the competence of the Court, the State is expected to perform the obligation stemming from the Court's judgments in good faith.²⁵

2.2 Rules of the Committee of Ministers

The principles underlined above are also invoked in the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements ²⁶ (hereafter “the Rules of the Committee of Ministers”). Rule 6§ 2 the Committee of Ministers expressly states that the Committee of Ministers shall examine whether:

- any just satisfaction awarded by the Court has been paid, including as the case may be default interest; and

If required, and taking into account the discretion of the State concerned to choose the means necessary to comply with the judgments, whether:

- individual measures have been taken to ensure that the violation has ceased and that injured party is put as far as possible, in the same time situation as that party enjoyed prior to the violation of the Convention;
- general measures have been adopted, preventing new violation similar to that or those or putting an end to continuing violation.

The supervision of the execution of the Court’s judgments takes place at the special human rights meetings of the Committee of Ministers the agenda of which is public.²⁷ Once the Court’s final judgment has been referred to the Committee, the latter invites the respondent State, where appropriate, to inform it of the steps taken to pay the amount

²⁵ See Vienna Convention on the Law of Treaties, Article 26.

²⁶ Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies (Previous Rules of the Committee of Ministers for the application of article 46, paragraph 2, of the European Convention on Human Rights was adopted on 10 January 2001).

²⁷ See Human rights files No. 19 –Council of Europe Publishing, 2002, p.30.

awarded by the Court in respect of just satisfaction and of the individual and general measures taken with a view to remedying the situation of the applicant.²⁸

It is the Committee of Ministers' well-established practice to keep cases on its agenda until the States concerned have taken all necessary measures to comply with the judgment of the Court.²⁹ If the respondent State informs the Committee that it is not yet in a position to provide information about measures taken in the execution of the judgment, the case automatically returns to the agenda.³⁰ The Committee will then re-examine the case in each meeting, until the required individual measures have been effected and every six-month until general measures necessary to ensure compliance with judgments have been taken.

The Committee gives priority to supervision of the execution of judgments in which the Court has identified what it considers a systemic problem accordance with Resolution Res(2004)3 of the Committee of Ministers. However, such priority to supervision is not to the detriment of the priority to other important cases, namely cases where the violation established has caused grave consequences for the injured party.³¹

In Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem³², the Committee invites the Court:

I. as far as possible, to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments;

II. to specially notify any judgment containing indications of the existence of a systemic problem and of the source of this problem not only to the state concerned and to the Committee of Ministers, but also to the Parliamentary Assembly, to the Secretary General of the Council of Europe and to the Council of Europe Commissioner for Human Rights, and to highlight such judgments in an appropriate manner in the database of the Court.”

The Rules of the Committee of Ministers allow the Committee of Ministers to adopt interim resolutions in order to provide information on the state of progress of the execution or, where appropriate, to express a concern and/or to make relevant suggestion

²⁸ Rule 6§1 of the Committee of Ministers.

²⁹ Rule 7§1 of the Committee of Ministers.

³⁰ Rule 7§2 of the Committee of Ministers. See, also, Human rights files No. 19 –Council of Europe Publishing, 2002, p.30.

³¹ Rule 4 of the Committee of Ministers.

³² Adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

with respect to the execution of the judgment.³³ The Committee of Ministers usually adopts the interim resolutions where it considers that the information provided by the Government of the respondent State does not disclose a satisfactory execution of the judgment and that the State ought to be “encouraged”.³⁴ The Committee's resolutions are available on the web site of the Committee of Ministers.³⁵

In addition, Rule 9 empowers the Committee of Ministers to consider any communication from the injured party concerning the payment of the just satisfaction or taking of individual measures. The Secretariat shall bring such communication to the attention of the Committee of Ministers. There is no formal right of access to the Committee's decision-making process as regards the need for general measures, either for the victim or for interested non-governmental organizations or other third parties. However, it appears in practice that the Committee's Secretariat will, where necessary, seek and receive information from individual applicants, non governmental, international organization and even national newspapers to assist in determining the nature and extent of reforms needed to ensure compliance with the Court's judgments, including on facts how interim resolutions have been carried out.³⁶

Information and documents provided to the Committee of Ministers by the State Party concerned, the applicant or non-governmental organisations for protection of human rights are accessible to the public.³⁷ However, the deliberations of the Committee of Ministers, as provided for in Article 21 of the Statute of the Council of Europe, remain confidential.³⁸

When the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation.³⁹ A referral decision requires a majority vote of two thirds of the representatives entitled to sit on the Committee

Finally, Rule 17 provides:

“after having established that the State concerned has taken all the necessary measures to abide by the judgments, the Committee of Ministers shall adopt a

³³ Rule 16 of the Committee of Ministers.

³⁴ See, for example, [ResDH\(2005\)42E](#) / 22 April 2005, [ResDH\(2005\)84E](#) / 13 July 2005 , [ResDH\(2006\)11E](#) / 01 March 2006, [ResDH\(2006\)26E](#) / 10 May 2006 concerning the case of *Ilaşcu and others* against Moldova and the Russian Federation.

³⁵ See <http://www.coe.int/t/cm/>

³⁶ The European Convention on Human Rights, Jakob & White, Forth Edition, Oxford press, 2006, p.495.

³⁷ Rule 14§2 (b) of the Committee of Ministers.

³⁸ Rule 14§1 of the Committee of Ministers.

³⁹ Article 46 §3 of the Convention.

resolution concluding that its function under Article 46§2 of the Convention have been exercised”.

2.3 Just Satisfaction

Just satisfaction is the only measure that the Court can order a State responsible for a violation of the Convention to perform in contrast to its classic form of declaratory judgment.⁴⁰ Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party”.

The purpose of Article 41 of the Convention is to place the applicant as far as possible in the position in which he would have been if the violation of the Convention had not taken place. Whether and to what extent the Court will award just satisfaction depends on the circumstances of the case. The initiative for having the claim for just satisfaction determined lies on the original applicant as the injured person.⁴¹

Awards of just satisfaction can be made under three heads: pecuniary loss, non-pecuniary loss, cost and expenses. The Court indicates the period, which is three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, within which the specified sum must have been paid to the individual.⁴² The Court has assumed the right to specify the currency in which the award is to be paid. In order to guard against inflation and for ease of comparison, the Court now expresses all monetary awards in euros, to be converted into national currency at the date of payment.⁴³

In accordance with Rule 75(3) of the Rules of the Court, the Court may decide that if settlement is not made within a specified time, interest is to be paid on any sum awarded. For example, in *Menesheva v. Russia*⁴⁴, the Court held that:

“.. from the expiry of the above-mentioned three months until settlement simple interest should be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points”.

⁴⁰ The Court establishes in any particular case whether the Convention has been violated by a State or not. See, also, Human rights files No. 19 –Council of Europe Publishing, 2002, p.13.

⁴¹ Rule 60 of the Rules of the Court. See, also, the recent case of *Ayrapetyan v. Russia*, judgment of 14 June 2007, § 23.

⁴² For one of many examples, see *Menesheva v. Russia*, judgment of 09/03/2006; final on 09/06/2006 § 109-116.

⁴³ The European Convention on Human Rights, Jakob & White, Forth Edition, Oxford press, 2006, p.496.

⁴⁴ See *Menesheva v. Russia*, judgment of 09/03/2006, final on 09/06/2006.

The need to protect the value of the sum awarded is:

“a general principle and should be applied without distinction to the sum awarded by the Court pursuant to the Article 41 of the Convention and to those agreed between the State and the applicant in a friendly settlement. The absence of an express provision on default interest in friendly settlement may be explained by the fact that the time of payment is fixed by the agreement between the State concerned and the applicant”.⁴⁵

Frequently, the Court does not award any damages to the applicant. The Court only provides, without reasoning and without regarding to the national possibilities for redress, that the mere finding of a violation constitutes in itself just satisfaction for the applicant.⁴⁶

The Court strictly upholds that the only element qualifying for just satisfaction is the injury due to the previously found violation of the Convention. Therefore, the Court requires a causal link between the injury and the violation.⁴⁷

For instance, in the case of *Yavorivskaya v. Russia*, the applicant alleged a violation of her Convention rights under Article 6§1 and Article 1 of the Protocol 1 because a final judgment in her favour had not been enforced. In this case, the applicant Ms Natalya Yavorivskaya brought a medical malpractice suit against the municipal health protection institution “Bilibino Central District Hospital” in August 1998. On 21 February 2000 the Bilibinskiy District Court of the Chukotka Region allowed the applicant's action and awarded her RUR 60,000 (EUR 2,109). The decision was not appealed and on 1 March 2000 it became final and enforceable. However, on November 15, 2001, the judgment was still not enforced. In response to her complains the Chukotka Regional Department of the Ministry of Justice informed her that enforcement of the judgment was impossible because the debtor had no cash account and recovery was not possible from other property assigned to the institution by its owner. On 6 February 2002 the bailiff determined that the enforcement was not possible due to the debtor's lack of funds. The enforcement proceedings were definitively closed and the writ of execution was returned to the applicant.

⁴⁵ Ibid paragraph 6 to 8.

⁴⁶ See Barkhuysen T., Michiel van Emmerik, 1999, p.8. *See, also Suntsova v. Russia* judgment of 17 November 2005, §31.

⁴⁷ Theory and practice of the European Convention on Human Rights, Antwerpen- Oxford, Intersentia, 2006, 308-319.

The Court held that there had been the violations of Article 6 and Article 1 of the Protocol 1.⁴⁸ The Court found the existence of a causal link between the violation and the alleged pecuniary damage for the reasons of non-enforcement of the judgment of 21 February 2000 and for closing the enforcement proceeding in the present case in 2002 without indication on any possibility for their re-opening. In addition, the Court accepted that the applicant suffered distress because of the State authorities' failure to enforce a judgment in her favour and awarded the applicant the sum for the non-pecuniary damage.

A decision of the Court to pay just satisfaction is enforceable in the national order without a writ of execution. The national authority against which the judgments are stated may satisfy itself that the judgment of the Court actually exists.⁴⁹

It is up to the Committee of Ministers under Article 54 to determine if the specified sum has been paid within the time –limit set by the Court. After the Committee's first examination at its meeting immediately following the delivery of the judgment, a case involving an award of just satisfaction will usually come up for the renewed examination after the expiry of the three month limit.⁵⁰ If the respondent State is unable to present written proof of payment of the sum, the case will return to the agenda at subsequent meeting until the Committee is satisfied that money with any default interest has been paid in full. If only payment of just satisfaction is required, the Committee of Ministers expressly states that:

“no other measure was required in the present case to conform to the Court's judgment”.⁵¹

2.4 Individual measures

There may be situations in which the consequences of the violation suffered by an injured party are not adequately remedied by the payment of just satisfaction.⁵² Depending on the circumstances, the execution of the judgment may require the respondent State to

⁴⁸ Article 6, in the relevant part, provides as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...” and Article 1 of Protocol No. 1 reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

⁴⁹ See Human rights files No. 19 –Council of Europe Publishing, 2002, p.14.

⁵⁰ See, for example, Document CM/Del/Dec(2006)982 FINAL 20 December 2006, sec.3 a,b.

⁵¹ For example, Resolution DH (99) 350 of 1999 in the case of *Remli v. France*.

⁵² The European Convention on Human Rights, Jakob & White, Forth Edition, Oxford press, 2006, p.497-498.

take individual measures in favour of the applicant. The individual measures depend on the nature of the violation and the applicant situation.

The different types of individual measures adopted by State parties can be found in the “List of individual measures adopted to remedy the effects of the violation on the applicant” on the web site of the Council of Europe dedicated to the execution of the judgments of the European Court of Human Rights⁵³. They include, for example, a speeding-up or conclusion of pending proceedings, modification in criminal records or in other official registers or measures concerning the right to residence such as right granted/reinstated and non-execution of expulsion measures. The individual measure most commonly required for *resitutio in integrum* is the reopening of domestic legal proceedings.

In some cases, the reopening of domestic proceedings has raised a problem because of the lack of appropriate national legislation.⁵⁴ Therefore, the Committee of Ministers adopted a recommendation of 19 January 2000 to Member States on the re-examination or reopening of certain cases at domestic level following judgments of the Court.⁵⁵ The Committee asks States to provide means of reopening proceeding within the national legal system following a finding a violation by the Court, particularly where:

- “the injured party continues to suffer very serious negative consequence because of the outcome of the domestic decision at issue which are not adequately remedied by the just satisfaction and cannot be rectified except by re-examination or reopening,
- the judgment of the Court leads to the conclusion that
 - a) the impugned domestic decisions is on the merits contrary to the Convention, or
 - b) the violation found is based on procedural errors shortcoming of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of”.

Sections 2.4.1- 2.4.3 provide examples of cases against the Russian Federation which required the reopening of the domestic procedures:

⁵³ See Web site dedicated to the execution of judgments of the Court http://www.coe.int/t/e/human_rights/execution/.

⁵⁴ For instance, the domestic law of the Belgium did not allow the reopening of criminal proceedings found unfair by the European Court of Human Rights until 9 May 2007. Legislation providing for the possibility for the applicants to request reopening of criminal proceedings following a judgment of the European Court will come into force on December 1, 2007. Italy, on the other hand, still has no mechanism to permit retrial.

⁵⁵ Recommendation Rec (2000) 2 on January 19, 2000.

2.4.1 *Shofman* case

The *Shofman* case⁵⁶, concerns the dismissal by domestic courts of the applicant's claim introduced in 1997 challenging the legal presumption of his paternity in respect of his wife's son born in 1995. Despite DNA tests establishing that the applicant was not the child's father, the applicant was required to pay maintenance in respect of the child because the courts were unable to accede to his request. It was time-barred under the terms of the Code of Marriage and Family of 1969, which was in force at the time of the child's birth. Under the Code a father could not challenge his paternity more than one year after he had been informed that the child had been registered as his.

The Court found that, in rejecting the applicant's action even though he had learned more than a year after the child's birth that he could not have been its father, the respondent State had failed to strike a fair balance between the general interest of the protection of legal certainty of family relationships and the applicant's right to respect his private life (violation of Article 8).⁵⁷

The Committee of Ministers supervising the execution of this judgment examined the adoption of individual measure, particularly the possibility of reopening civil proceedings found to be unfair. As a result, it is known that on February 7, 2007 the Geleznodorogny District Court of Novosibirsk cancelled the previous decision in the applicant's case on the ground of newly discovered circumstances.⁵⁸ The applicant's claim challenging his paternity in respect of his former wife's child was granted by the same court on March 21, 2007 and the birth register was modified accordingly. Shortly after the applicant lodged a request to the same court with a view to cancelling another decision on the basis of which he is required to pay maintenance in respect of the child.⁵⁹ Information in this respect is awaited by the Committee of Ministers.

⁵⁶ *Shofman v. Russia*, judgment of 24/11/2005, final on 24/02/2006, §8-29.

⁵⁷ See [CM/Del/OJ/DH\(2007\)997section4.2publicE / 11 July 2007](#) - 997th meeting (DH), 5-6 June 2007 - Annotated Agenda - Section 4.2 - Public information version.

⁵⁸ Decision of 16 November 2000.

⁵⁹ Decision of 15 September 2003.

2.4.2 Chechen cases

In the *Isayeva* case as well as in the *Isayeva, Yusupova and Bazayeva* and *Khashiev and Akayeva* cases,⁶⁰ the Court found a number of violations of the Convention resulting from and/or relating to the authorities' actions during anti-terrorist operations in 1999-2000 and the continuous shortcomings in domestic remedies in this respect. These cases concern the death of applicants' relatives during Russian military operations in Chechnya in the aforementioned years.

The Committee of Ministers repeatedly noted that these judgments require significant individual measures to remedy the consequences of the violations found⁶¹ as well as general measures to prevent new similar violations.⁶² The Russian authorities were invited to provide information on the measures envisaged or being taken to remedy the shortcomings in the investigations which were identified by the Court's judgments, and to ensure the availability of effective domestic remedies. On October 4, 2005, the applicants provided the Secretariat, through their representatives, with detailed submissions claiming a number of individual measures to be adopted by the authorities.

Concerning the cases of *Isayeva, Isayeva, Yusupova and Bazaeva*, on 14 November 2005, the Russian authorities, namely, the Chief Military Prosecutor's office ordered the Military Prosecutor of the Unified Army Group to conduct new investigations under his close supervision pursuant to Articles 214 and 413 of the Code of Criminal Procedure, considering Article 46 of the Convention, together with the Recommendation of the Committee of Ministers to member States Rec(2000)2 of 19 January 2000. The

⁶⁰ *Isayeva*, judgment of 24/02/2005, final on 06/07/2005, §10-36; *Isayeva, Yusupova and Bazayeva*, judgment of 24/02/2005, final on 06/07/2005, § 10-42; *Khashiyev and Akayeva*, judgment of 24/02/2005, final on 06/07/2005, rectified on 01/09/2005, §11-44.

⁶¹ The violations found by the European Court in these cases are the following:

- the state's responsibility for the killing of Khashiyev's and Akayeva's relatives, as the Court found it established that they were killed by military servicemen during a military operation in Grozny (violation of Article 2);
- the failure to prepare and execute military operations with the requisite care for the lives of the civilians who were killed during air strikes conducted by the Russian air forces in the countryside not far from the Chechen-Ingush administrative border (violations of Article 2 in two other cases);
- failure to carry out an effective criminal investigation into the circumstances surrounding the deaths of the applicants' relatives, as well as into the circumstances of the abovementioned military operations (procedural violations of Article 2 and violations of Article 13 in all the cases);
- failure to conduct a thorough and effective investigation into allegations of torture (violations of Article 3 in the Khashiyev and Akayeva case);
- the lack of any effective remedy as a result of the abovementioned absence of effective criminal investigation (violations of Article 13 in all the cases);
- unjustified destruction of one applicant's property as a result the abovementioned air strike by the military forces (violation of Article 1 of Protocol No. 1).

⁶² See [CM/Inf/DH\(2006\)32 revised](#) -Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments - Memorandum prepared by the Secretariat of the DGII to assist the Committee of Ministers' supervision of the execution of the European Court's judgments (Article 46 of the ECHR).

government further informed the Secretariat of the Committee of Ministers that the Military Prosecutor had taken the following procedural steps:

- conducting operational tactical expert examinations} no least to check the proportionality of the lethal force used during the military operation near the villages of Shaami-Yurt and Katyr-Yurt and to determine whether measures had been taken to ensure the safety of civilians;
- questioning of 200 witnesses;
- additional examination of the crime scenes, forensics medical examination of the victims and re-enactments of the events.

In *Khashiev and Akayeva* case, the investigations were also re-opened and assigned to the Prosecutor's office of the Starypromylovsky District of the City of Grozny (Chechen Republic), under the supervision of the General Prosecutor's office on 25 January 2006. According to the latest information received, 84 other persons affected by the events at issue were granted victim status in the present investigation. The authorities have taken a number of additional steps, such as questioning of 300 witnesses, ballistic examinations of the cartridges provided by M. Khashiev although without a positive result, gathering of all materials on the conducting of these operations and on the federal forces involved.

In February 2006, the Committee of Ministers welcomed the orders for new investigations to be conducted under the supervision of the Chief Military Prosecutor or Prosecutor General in the *Isayeva, Isayeva Yusupova and Bazaeva* cases, and *Khashiev and Akayeva* case. The information on the progress as well as results of investigations is awaited by the Committee of Ministers for the completed execution of the measures in these cases.⁶³

2.4.3 The case of *Ilaşcu and others*

The case concerns violations committed against the applicants in the “Moldavian Republic of Transdnistria” (“the MRT”), a region of Moldova which declared its independence in 1991 but is not recognised by the international community.

In this case the Court found responsible Moldova and the Russian Federation for the violation of Article 3 (prohibition of torture) and Article 5 (right to liberty and security) of the Convention in respect to applicants Alexandru Leşco, Andrei Ivanţoc and Tudor

⁶³ For more information, see Memorandum prepared by the Secretariat of the DG II to assist the Committee of Ministers’ supervision of the execution of the European Court’s judgments (Article 46 of the ECHR) “Violations of the ECHR in the Chechen Republic: Russia’s compliance with the European Court’s judgments”.

Petrov-Popa, who were unlawfully imprisoned from 12 to 15 years, and Mr Ilaşcu, who was unlawfully sentenced to death. In addition, the Court found responsible the Russian Federation of the violation of Article 34 (the right of individual petition). The Court held that there had been and continued to be a violation of Article 5 of the Convention by Moldova since May 2001 as regards the applicants still detained. There was a violation of Article 5 of the Convention by the Russian Federation as regards Mr Ilaşcu until May 2001, and that there had been and continued to be a violation of that provision as regards the applicants still detained.⁶⁴

The Court further held, unanimously, that Moldova and the Russian Federation were to take all the necessary steps to put an end to the arbitrary detention of the applicants Mr Ivanţoc and Mr Popa (formerly Petrov-Popa) who were still imprisoned, and secure their immediate release. Moreover, it emphasised the urgency of this measure in the following terms:

“any continuation of the unlawful and arbitrary detention of the...applicants would necessarily entail a serious prolongation of the violation of Article 5 found by the Court and a breach of the respondent states' obligation under Article 46§1 of the Convention to abide by the Court's judgment.”⁶⁵

The execution of the judgment concerning this case led to the adoption of interim resolutions⁶⁶ of the Committee of Ministers which stressed that the continuation of the unlawful and arbitrary detention of the applicants after the Court's judgment fails to satisfy the Court's demand for their immediate release. The Committee of Ministers recalled the unconditional obligation of respondent States to abide by the Court's judgments. The Committee of Ministers insisted that the respondent States take all the necessary steps to put an end to the arbitrary detention of the two applicants still imprisoned and secure their immediate release.⁶⁷ In the latest of those Resolutions, the Committee of Ministers:

- “regret(s) profoundly that the authorities of the Russian Federation have not actively pursued all effective avenues to comply with the Court's judgment, despite the Committee's successive demands to this effect;

⁶⁴ For more detail facts, See the case of *Ilaşcu and others v. Moldova and Russia*, judgment of July 8, 2004 §4-289.

⁶⁵ Grand Chamber Judgment on July 8, 2004 § 490.

⁶⁶ Interim Resolution ResDH(2005)42, adopted on 22 April 2005; Interim Resolution ResDH(2005)84, adopted on 13 July 2005; Interim Resolution ResDH(2006)11, adopted on 1 March 2006; Interim Resolution ResDH(2006)26, adopted on 10 May 2006.

⁶⁷ Interim resolutions and other notes concerning the case of *Ilaşcu and others* against Moldova and the Russia available on www.coe.int.

- encourages the authorities of the Republic of Moldova to continue their efforts towards putting an end to the arbitrary detention of the applicants still imprisoned and securing their immediate release;
- declares the Committee's resolve to ensure, with all means available to the Organisation, the compliance by the Russian Federation with its obligations under this judgment;
- calls upon the authorities of the member States to take such action as they deem appropriate to this end.”⁶⁸

During the last examination of this case,⁶⁹ the Permanent Representative of Finland made a statement on behalf of the European Union with the support of the acceding countries (Bulgaria and Romania), the candidate countries (Croatia, “the former Yugoslav Republic of Macedonia” and Turkey), the countries of the stabilisation and association process and potential candidates (Albania, Bosnia and Herzegovina and Serbia), Iceland, Liechtenstein and Norway, members of the European Free Trade Agreement (EFTA) and of the European Economic Area (EEA) as well as Ukraine and Georgia. These states recalled the necessity of executing this judgment, which has already been the subject of four interim resolutions. They declared that the non-execution of this judgment has cast a shadow on the Russian chairmanship of the Committee of Ministers as well as on the credibility of the Council of Europe’s system of human rights protection. These states therefore urged the Russian Chair to take all possible measures to bring about the immediate release of the applicants.⁷⁰ Moreover, the Deputies instructed the Secretary General to communicate Interim Resolution ResDH(2006)26⁷¹ to the Secretary General of the United Nations Organisation and the Secretary General of the OSCE, asking them to draw the attention of the competent organs of their respective Organisations to this text.⁷²

Finally, on 12 July 2007, the Committee of Ministers adopted Resolution CM/ResDH(2007)106 concerning the judgment of the Court (Grand Chamber) in the case of *Ilașcu and others against Moldova and the Russian Federation*, where it informed that the applicants Ivanțoc and Popa have finally regained their freedom, but it deeply regrets that, despite the injunction of the Court, they were only released on 2 and 4 June 2007 respectively. The Committee noted that the authorities of the Republic of Moldova have regularly informed the Committee of the efforts they have made to secure the applicants' release, while the authorities of the Russian Federation have not actively pursued all

⁶⁹ 979th meeting of the Committee of Ministers on 8 November 2006.

⁷⁰ See Information document of the Committee of Ministers CM/Inf/DH(2006)17 revised 18.

⁷¹ Adopted on 10 May 2006.

⁷² The whole of the recent positions of the delegations and of the Secretariat is reflected in document [CM/Inf/DH\(2006\)17 rev30](#) (*restricted*).

effective avenues to comply with the Court's judgment. Further, The Committee of Ministers noted that Mr Ivanțoc and Mr Popa have lodged a new application with the Court, against Moldova and the Russian Federation, on the ground of the prolongation of their arbitrary detention beyond 8 July 2004. It was decided to suspend its examination of this case and to resume it after the final determination of the new application by the European Court of Human Rights.

Most of the States have incorporated some mechanisms into national law to permit domestic proceedings to be reopened. Whether the Russian domestic law allows reopening the above mentioned proceedings will be discussed below.

2.5 General measures

In addition, to financial compensation under Article 41 of the Convention and/or other individual measures, States in certain cases also adopt general measures. The purpose of the general measures is non-repetition of similar violations in the future. Lists of General measures adopted to prevent new violations of the European Convention on Human Rights give examples of the general measures. These measures can include executive action in the form of regulation, circular or changes of practice, publication of judgments/ resolutions or administrative measures whatever the organ.⁷³

In many cases, domestic legislation or the absence of legislation led to the violation of the Convention. In this situation the States are required to adopt new legislation or amend it. Amendment to the national legislation mostly takes place when the Court found systematic problems which led to the similar applications to the Court. This kind of form of the general measure is required to be taken by the State in order to avoid the repetition of the violation, as well as to avoid additional work of the Court on the same matter.

In some cases, where the Court have found violations of the Convention, the structural problem lies not in obvious conflict between national law and the Convention, but rather in the case law of the national courts. In that situation a change of case law of national courts may preclude possible future violation. When the Courts adjust their legal stance and their interpretation of national law to meet the demands of the Convention, as reflected in the Court's judgments, they implement these judgments by virtue of the domestic law. In this way, further similar violations may be effectively prevented.

⁷³ For more information on different types of general measures, see Lists of General measures adopted to prevent new violations of the European Convention on Human Rights available on www.coe.int/t/e/human_rights/execution/

However, it is a precondition that the judgment concerned is published and circulated among the national authorities, including courts, and accompanied, where appropriate, by the an explanatory circular.⁷⁴

2.5.1 *Kalashnikov* case

In *Kalashnikov* case from 2002,⁷⁵ the Court found a violation of Article 5§3 concerning the excessive length of detention, a violation of Article 6§1 concerning the excessive length of criminal proceedings brought against the applicant and a violation of Article 3 of the Convention concerning poor conditions of detentions, amounting to degrading treatment.

The Russian Government provided the Committee of Ministers with information regarding a number of general measures taken to prevent similar violations. The Government adopted the Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006. Also a new Code of Criminal Procedure⁷⁶ which transferred the power to order detention to the courts and imposed stricter criteria for allowing pre-trial detention and stricter time-limits on investigation and trial was introduced. A circular letter was sent by the Vice President of the Supreme Court, stressing the precedent value of the *Kalashnikov* judgment and requesting that all courts ensure strict compliance with the time-limits set by the Code of Criminal Procedure for investigation and trial and prevent unjustified delays in proceedings.⁷⁷

The Committee of Ministers after examining the information provided by the Government, adopted the interim resolution ResDH (2003)123.⁷⁸ In this resolution The Committee of Ministers:

- “Welcomed progress achieved so far in this issue, however considered that further measures are required in this field to remedy the structural problems highlighted by the present judgment. In particular, the importance of prompt action by the authorities to remedy the overcrowding in those SIZOs⁷⁹ where this problem still remains (57 out of the 89 Russian regions) and to align the sanitary conditions of detention on the requirements of the Convention;
- called upon the Russian authorities to continue and enhance the ongoing reforms with a view to aligning the conditions of all pre-trial detentions on the requirements

⁷⁴ Theory and practice of the European Convention on Human Rights (2006) p. 308-319.

⁷⁵ *Kalashnikov v. Russia*, judgment of 15 July 2002, §§ 103, 121 and 135.

⁷⁶ In force since July 1, 2002.

⁷⁷ Letter of 5 September 2002. See Appendix to Interim Resolution DH(2003)123 *Information provided by the Government of the Russian Federation* during the examination of the *Kalashnikov* case by the Committee of Ministers.

⁷⁸ Adopted on 4 June 2003 at the 841st meeting of the Ministers' Deputies.

⁷⁹ Detention facilities in the Russian Federation are called “SIZO”.

of the Convention, particularly as set out in the Kalashnikov judgment, so as effectively to prevent new, similar violations”.

In response the Government of the Russian Federation made new amendments to the Criminal Code, to the Codes of Criminal Procedure and of Execution of Sentences to further improve, *inter alia*, the conditions of detentions. There has been a continuous increase in budgetary means allocated to the Penitentiary Department of the Justice Ministry (approximately 20% increase was planned in the draft budget for 2005 (61 billion roubles - 1.7 billion euros) compared to the 2004 budget (48.3 billion roubles - 1.4 billion euros)). The Federal Programme for reforming the Ministry of Justice's penitentiary system for 2002-2006 resulted in the creation of new detention facilities (10 988 places already created and 4 688 places planned before the end of the year). A similar programme for 2007-2016, which provides for the construction of 26 new detention facilities and for the modernization of 97 already existing ones, has been recently adopted. Other federal programmes aiming at improving the material conditions of detention, and in particular detainees' sanitary environment, are being implemented.⁸⁰ The draft law on the reform of the Criminal Code and of the Code of Criminal Procedure, providing new punishments such as release on probation, was submitted to Parliament on April 28, 2006.

Furthermore, the Russian authorities submitted a draft law amending the Criminal Code, the Code of Criminal Procedure and the law “On custody” which could help to reduce the prison population, notably through reform of existing conditions in which detention may be ordered. This draft law is currently under the examination of the Secretariat of the Human rights Directorate. According to the law “On custody”,⁸¹ suspects and accused enjoy a number of rights, not least the right to submit proposals, applications and complaints to heads of the detention centers, to courts, prosecutors, ombudsmen. Article 17§7 of the abovementioned law provides the right to complain to a court of violations of detainees' legal rights and interests.⁸² The Russian authorities were invited to keep the Committee informed about the progress of the measures reported above and to provide the relevant statistics on a regular basis.⁸³

⁸⁰ As provided by the Russian authority, one of the programmes is called “Prevention and fighting against diseases of social character (2002-2006)”.

⁸¹ Adopted on July 15, 1995, N°103-FZ.

⁸² This information have been provided by the Russian Government to the Committee on Legal Affairs and Human Rights (Rapporteur: Mr Jurgens) in the framework of the preparation of the Parliamentary Assembly Report on the Implementation of the judgments of the European Court.

⁸³ See, Agendas and Documents for DH meetings on http://coe.int/T/E/Human_rights/execution.

2.5.2 *Ryabykh* case

In this case the Court found a violation of the applicants' right to a court (Article 6 §1). The Presidium of the Belgorod Regional Court quashed a final judicial decision in the applicants' favour, following application for a supervisory review (*nadzor*) lodged by state officials, under Articles 319 and 320 of the Code of Civil Procedure then in force. These provisions gave different state officials discretionary powers to challenge final court decisions at any moment. The Court found that the use of supervisory review infringed the principle of legal certainty and thus the applicants' right to a court.⁸⁴

Consequently, the Russian Federation has adopted certain general measures to remedy the systemic problem giving rise to the violation. According to the new Code of Civil Procedure,⁸⁵ the time-limit for lodging an application for supervisory review has been limited to one year (Article 376) and the list of state officials empowered to make such applications has been significantly narrowed (Article 377).

While these measures were welcomed by the Committee of Ministers, doubts were expressed as to whether the measures taken are sufficient to prevent new, similar violations. The Preliminary Resolution of the Committee of Ministers of the Council of Europe Res DH (2006)1 states:

“Despite the positive developments mentioned above, the current procedure still allows parties' legitimate reliance on juridical decisions that have become binding and enforceable to be frustrated and that the ensuring uncertainty may continue for an indefinite period after the application for supervisory review has been lodged”.

The Russian authorities were, thus, invited to continue the reform of the supervisory review procedure to bring it into line with the Convention's requirements, as highlighted, *inter alia*, by the *Ryabykh* judgment. At the 906th meeting of the Committee of Ministers,⁸⁶ it was proposed to hold a high-level seminar involving representatives of the Russian supreme courts, executive, *Prokuratura* and advocates to take stock of the current *nadzor* practice and discuss the prospects for further reform of this procedure in conformity with the Convention's requirements.⁸⁷

⁸⁴ *Ryabykh v. Russia*, judgment of 24/07/03, final on 03/12/03, §57-58.

⁸⁵ Entered into force 01.02.2003.

⁸⁶ Held on December 8-9, 2004.

⁸⁷ Interim Resolution DH (2006)1E of 8 February 2006. For the conclusions of the seminar, see [CM/Inf/DH\(2005\)20E / 23 March 2005](#) Supervisory review (*nadzor*) procedure in the Russian Federation: Prospects for reform in line with the ECHR requirements - Materials of the high-level seminar organised by the Directorate General of Human Rights (DG-II) in the context of the implementation of the European Court's judgment in *Ryabykh v. Russia* case, Strasbourg, 21-22 February 2005

As a result, the Directorate General of Human Rights of the Council of Europe in close cooperation with Russian authority organized a seminar in Strasbourg, from 21-22 February 2005. The participants at the Conference welcomed the reforms of the supervisory review procedure adopted by the Russian Federation through the new Codes of Criminal, Commercial (Arbitration) and Civil Procedure in force respectively since 1 July 2002, 1 January 2003 and 1 February 2003. Notably, it was suggested by many participants that the supervisory review in its amended form more closely respected the legal certainty principle enshrined in the Convention, namely, in criminal and commercial matters. Reservations were, however, expressed from the Convention's viewpoint regarding to the continued possibility to exercise a “supervisory review” procedure in civil matters.⁸⁸ Given the time needed for enactment of new legislation, the Committee of Ministers decided to resume consideration of the present issue at their 1007th meeting which will be held on October 15-17, 2007.

2.5.3 *Znamenskaya* case

The case concerned the Russian authorities' failure to establish biological paternity and amend the surname of the applicant's stillborn child, who had been registered under the name of the applicant's husband, from whom she was separated at the time. The domestic courts rejected the applicant's request on the ground that the stillborn child had not acquired civil rights under the relevant provisions of the Family Code which apply to living children. The Court accordingly concluded that the failure to establish the child's descent violated her right to “private life” (violation of the Art. 8).⁸⁹

The government conceded that, under the applicable provisions of family law, the claim should have been granted. Given that this is the first such violation found against the Russian Federation, the authorities were invited to publish the judgment and disseminate widely it to the courts and Civil Registration Services. As provided later by the Russian authorities, the judgment of the Court had been sent out to all judges and other competent authorities together with letters⁹⁰ from their hierarchy inviting them to take into account of the findings of the Court in their daily practice. The judgment was also published in the

⁸⁸ See document CM/Inf/DH(2005)20 of 23 March 2005.

⁸⁹ *Znamenskaya v. Russia*, judgment of 02/06/2005, final on 12/10/2005, §8-32.

⁹⁰ Letter from the Deputy of the President of the Supreme Court of the Russian Federation on 03/08/2006; letter from the Head of the Federal Registration service.

Bulletin of the European Court of human rights (Russian version) in 2006, n°8. The Committee decided to resume consideration of this item at their 1007th meeting on October 15-17, 2007, in the light of a draft final resolution to be prepared by the Secretariat.⁹¹

⁹¹ See Annotated Agenda CM/Del/OJ/DH(2007)997, Section 6- Cases presented with a view to the preparation of a draft final resolution.

3 Implementation of judgments in the national legal system of the Russian Federation

3.1 International law and national law

There are different theories, such as “monism” and dualism”, which try to explain the relationship between international law and national law. This subject is complicated, not least because some authors use those theories to refer to different things. The present work will not discuss them. However, it is necessary to mention here that from the perspective of international law, States cannot invoke the legal procedure of their municipal system as justification for not complying with international law.⁹² This principle has been stated in the 1969 Vienna Convention on the Law of Treaties, Article 27 of which provides:

“A party may not invoke the provision of its internal law as justification for its failure to perform a treaty”.

3.2 Legal grounds for implementation of the Court’s judgments

The Russian Federation ratified the European Convention of Human Rights and Fundamental Freedoms on May 5, 1998. By the end of November 2006, the Court had delivered 174 judgments against Russia.⁹³ To see how the judgments are implemented into national legal order one must first look into the relevant provisions of the Constitution of the Russian Federation to find out how international law affects the national law of the Russian Federation.⁹⁴

Article 15 §4 of the Constitution of the Russian Federation states:

⁹² See Cassese A (2005), p 217-220.

⁹³ See Russian bulletin on human rights (Russian version), 2007, No.22.

⁹⁴ The Russian Constitution was adopted at national voting on December 12, 1993 and entered into force on 25 December 1994.

“The commonly recognized principles and norms of the international law and international treaties of the Russian Federation shall be a component part of its legal system. If an international treaty of the Russian Federation stimulates other rules than those stipulated by the law, the rules of the international treaty shall apply.”

Another provision of the Constitution of the Russian Federation that is relevant to the application of the European Convention is Article 17§1 which provides:

“The basic rights and liberties in conformity with commonly recognized principles and norms of the international shall be recognized and guaranteed in the Russian Federation and under this Constitution”.

From the above-mentioned provisions, it appears that the European Convention on Human Rights and Fundamental Freedoms is directly applicable on the territory of the Russian Federation after its ratification. In addition, by accepting compulsory jurisdiction of the Court to all matters concerning interpretation and application of the Convention and its protocols thereto⁹⁵ as well as the binding force of final judgments⁹⁶, the Russian Federation is obliged to implement those judgments in its domestic legal system.

Moreover, the Constitution of the Russian Federation contains a relevant provision concerning individual complaints to international bodies, which states the following:

“In conformity with the international treaties of the Russian Federation, everyone shall have the right to turn to interstate organs concerned with the protection of human rights and liberties when all the means of legal protection available within the state have been exhausted.”⁹⁷

This provision confirms the right of the individual to complain to the Court as well as the Committee of Ministers after the Russian Federation’s ratification of the European Convention.⁹⁸

3.3 Execution of the Court’s judgments in the Russian Federation

By the federal law No.54- Φ3⁹⁹ on the ratification of the European Convention for the Protection Human Rights and Fundamental Freedoms, the Russian Federation agreed to

⁹⁵ Article 32 of the Convention.

⁹⁶ Article 46 of the Convention.

⁹⁷ Article 46§2 of the Constitution of the Russian Federation.

⁹⁸ See Maxim Ferschtman, *Reopening of judicial procedures in Russia: the way to implement the future decisions of ECHR supervisory organs?* (1999), p.123-128.

be bound by the judgment of the European Court of Human Rights. It was an important step for the practical application of Article 46 of the Constitution.

As it was discussed above, the implementation of judgments in the national legal order requires execution of the notions just satisfaction, individual and general measures. In this subsection, the thesis presents information on payment of the financial compensation by the Russian authorities under Article 41, reopening of the domestic procedure under the current legislation of the Russian Federation as a mean of individual measure, and systematic violations occurring in cases against the Russian Federation which lead to amendments in the legislation of the Russian Federation as a form of general measure.

3.2.1 Payment of just satisfaction

According to information provided by the Representative of the Russian Federation to the European Court of Human rights, the payment of financial compensation under Article 41 of the Convention increases year by year. In 2002, the Russian Federation paid 353 000 RUR. By 2004 the payment of sum awarded as just satisfaction reached 21 400 000 RUR. In first part of 2006, the Russian Federation paid 12 335 000 RUR to the applicants whom rights and freedoms have been violated.¹⁰⁰

Until now, there are no complaints from applicants on a failure of the Russian Federation to pay the financial compensation awarded by the Court. However, the Committee of Ministers has noted in several occasions that proofs of payment from the Russian Federations have come with delays.¹⁰¹ The last Annotated Agenda of the Committee of Ministers provides statistic information on confirmation of payment of the capital sum awarded by the Court. The statistics show that there are 19 cases where the Russian authorities have not confirmed the payment of the capital sum, but no cases which can be supervised after expiration of the time-limit. Comparing with other states of the Council of Europe, it can be noted that the Russian Federation do make efforts to pay just satisfaction awarded by the Court.¹⁰²

⁹⁹ Adopted on March 30, 1998.

¹⁰⁰ See Information provided on Round table of the Council of Federation on November 9, 2006.

¹⁰¹ See document List of cases pending for supervision of execution on www.coe.int/T/E/Human_Rights/execution/

¹⁰² See Annotated Agenda of 997th meeting (DH), 5-6 June 2007/ Statistics Public 11 July, 2007.

3.2.2 Reopening of domestic procedures

The execution of the individual measure is necessary in some cases to address national legal mechanisms for restoration of an individual's rights and freedoms which have been violated. It was mentioned in Chapter 2 that the reopening of the domestic procedure is a form of individual measure which the State frequently takes.

The present legislation of the Russian Federation allows for the reopening of a final judicial decision in the national legal system through the Code of Criminal Procedure¹⁰³ and the Code of Arbitration Procedure.¹⁰⁴ Both laws foresee the reopening of the procedure on the basis of new circumstances which include a finding of the Court's judgment a violation of the Convention.¹⁰⁵

The reopening of criminal procedure in favour of a convicted person is not time barred. The day a criminal case is reopened, will be the day when a judgment of the European Court becomes final.¹⁰⁶ Under the Russian legal system, the right to initiate the reopening of criminal proceedings belongs to the *Prosecutor*.¹⁰⁷ In situations when the reopening of criminal procedure follows the judgment of the European Court, the review of the criminal case is carried out by the Presidium of the Supreme Court of the Russian Federation. After examination of the case, the Presidium of the Supreme Court, as a result, annuls or alters the judgment concerned.¹⁰⁸

According to the Code of Arbitration Procedure, an application for the reopening of a judicial decision has to be lodged by the parties to the dispute within three months from the day that new circumstances have become known.¹⁰⁹ The Court that altered or passed the previous decision reviews the application for the reopening of the judicial decision. If the court annuls the previous judicial decision, the court has a right to reconsider the case in the same proceeding, unless there are protests of parties to do so.¹¹⁰

¹⁰³ No.174 Φ3 of 18 December 2001.

¹⁰⁴ No. 95-Φ3 of 24 July 2002.

¹⁰⁵ See the Code of Criminal Procedure, Article 413§4 (2) and the Code of Arbitration Procedure, Article 311(6).

¹⁰⁶ See the Code of Criminal Procedure, Article 414 §1.

¹⁰⁷ Head of the institute called "*Prokuratura*" which has broadly formulated power and task to protect legality and ensure compliance with the law.

¹⁰⁸ See the Code of Criminal Procedure, Article 415 §5.

¹⁰⁹ See the Code of Arbitration Procedure, Article 312 §1.

¹¹⁰ See the Code of Arbitration Procedure, Article 317.

However, the present Code of Civil Procedure¹¹¹ as well as the Code of the Russian Federation on administrative offences do not contain a clear provision which allows the reopening of domestic procedure on the basis of the Court' judgment.

According to the Code of Civil Procedure final decisions of the national courts, including decrees of the Presidium for supervisory instance will be reopened under newly discovered circumstances.¹¹² The nature of the newly discovered circumstances is not defined. Application for such review has to be lodged to the courts which passed the previous decision, within three months from the day that newly circumstances were discovered by the parties to the dispute, *the Prosecutor* or other participants to the dispute to the court. The court after examination of the circumstances can leave the previous decision in force, reject application or take a new decision, which is final.¹¹³

The Code of Civil Procedure contains also provisions for a supervisory review (*производство в порядке надзора*) of the decisions of courts, except judicial decrees of the Supreme Court's Presidium, if the rights of the parties to the dispute or other participants were violated by such decisions.¹¹⁴ Application for such review must be lodged to the "courts of supervisory instance" within one year from the day a final decision of the court entered into force and the means or ways for appeal have been exhausted. The reopening of the procedure by way of supervisory review is not relevant to a situation where the reopening of the procedure could be a form of individual measure foreseen by the Court's judgment because of the time-limit.

As for the reopening of judicial decisions in administrative cases, the Code of the Russian Federation on administrative offences provides that reopening of final decisions are considered by the Supreme Arbitration Court by way of supervisory review in accordance with the Code of Arbitration Procedure.

It appears to me that the reopening of civil procedure under newly discovered circumstances can include the findings of the Court. As it was mentioned in the *Shofman* case, the Geleznodorozhny District Court of Novosibirsk cancelled the previous decision¹¹⁵ in the applicant's case on the ground of newly discovered circumstances on February 7, 2007. It would be clear; however, if the Code of Civil procedure defines the newly discovered circumstances under Article 392 and makes a reference to the findings of the European Court.

¹¹¹ No.138 ФЗ of 14 November 2002.

¹¹² The Code of Civil Procedure with amendments of 28.07.2004 N 94-ФЗ, Article 392.

¹¹³ See the Code of Civil Procedure, Article 397.

¹¹⁴ See the Code of Civil Procedure, Articles 376-391.

¹¹⁵ Decision of 16 November 2000.

3.2.3 Systematic violations of the Convention

The Russian Federation did not go through comprehensive analyses of its legislation before the State joined the Council of Europe. While other States had reviewed their legislation in order to comply with the European human rights standards, steps taken in the Russian legal system to adopt the standards of the Council of Europe were not consistent. During the four years after the first judgment of the Court against the Russian Federation, there have been executed a series of general measures to comply with the Court's judgments. The measures were directed for an improvement of the existing detention facilities, a decrease in the workload of the national courts as well as for efforts to speed up the judicial procedure of the national courts. However, these measures have not solved the problems.¹¹⁶

Documentation gathered by the Committee of Ministers brings to the fact that the Russian Federation has difficulties with adoption of general measures. The Court found that most of the cases against Russia have systematic problems. These problems include:

- *The non-enforcement of domestic courts' decisions in civil cases against state bodies (violation of Article 6 of the European Convention and Article 1 of Protocol 1 of the Convention);*¹¹⁷
- *Violation of the right to a court hearing or trial within a reasonable time in both civil and criminal cases (violation of Article 6 of the Convention);*¹¹⁸
- *Violation of the principle of legal certainty in connection with "nadzor" review of judicial decisions that have entered into force (Violation of Article 6 of the Convention);*¹¹⁹
- *Unsubstantiated arrest and detention and unjustified length of detention (Violation of Article 5 of the Convention);*¹²⁰
- *Violation of the right to life and the prohibition of torture, and a lack of effective investigation into claims of torture, death in detention and murders claimed to have been carried out by state representatives. (Violation of Articles 2 and 3 of the Convention)*¹²¹

¹¹⁶ See Report of the Representative of the Russian Federation in the European Court of 20 May 2002 (Russian version)

¹¹⁷ See the case of *Yavorivskaya* in section 2.3 of the thesis.

¹¹⁸ See, for example, *Kalashnikov* case in subsection 2.5.1.

¹¹⁹ See *Ryabykh* case in subsection 2.5.2.

¹²⁰ See the case of *Smirnova v. Russia*, judgment of 24.07.2003, final on 24.10.2003, §70, 71; and *Kalashnikov* case in subsection 2.5.1.

¹²¹ See *Chechen* cases in section subsection 2.4.2.

Currently, there are, under the supervision of the Committee of Ministers, 62 cases against the Russian Federation on the failure or substantial delay by the administration or state companies in abiding by final domestic judgments; 27 cases on the extensive length of the domestic proceedings; 12 cases concerning the quashing of the final judicial decisions following a supervisory review-“*nadzor*”; several other cases on unjustified length of detention and violation of the right to life and prohibition of torture, and a lack of effective investigation.¹²²

A short review of the main systematic violations underlined in this subsection is presented below.

3.2.3.1 The non-enforcement of domestic courts' decisions

The majority of applicants in cases regarding the non-enforcement of rulings made by the national courts are individuals who have suffered from a) non-payment of pensions and whose precise sum had been determined by the Russian courts; b) a failure to offer them social benefits as awarded by the court's decision; and c) non-compliance with the court's decision on compensation for distress or injury caused by state organs or government officials. An example of the latter item illustrated in case of *OOO Rusatommet v Russia*.¹²³ In this case the complaint had suffered from the non-enforcement of a decision of the commercial court on the collecting of monies due to him from the Ministry of Finance of the Russian Federation.¹²⁴

The main elements at the origin of the non-enforcement of domestic court's decisions summarized as:

- the bailiff's inefficiency;
- lack of coordination between various enforcement agencies;
- lack of clarity in judgments to identify the debtor;
- lack of funds on the debtor's account;
- non-availability of budgetary funds;
- lack of clarity as to documents to be submitted to the Ministry of Finance¹²⁵

¹²²For more information, see Annotated Agenda of 997th meeting (DH), 5-6 June 2007/ Statistics Public 11 July, 2007.

¹²³ *OOO Rusatommet v. Russia*, judgment of 14 June 2005, §7-17.

¹²⁴ See “Systematic violations of the Convention on Human Rights and Fundamental Freedoms in the Russian Federation, as reflected in the decisions of the European Court of Human Rights- brief overview prepared by “Demos” Center, 2007.

¹²⁵ Between 2001 and 2005 the enforcement of judgments against public authorities was mainly based on a special execution procedure established by government decrees entrusting execution to the Ministry of Finance- (Decree of 22 February 2001 No.143).

In response the Russian authority referred to the Law No.197- Φ3 of 27 of December 2005 which introduced a new Chapter in the Budgetary Code which confirms the special execution procedure. The main principles underlying the new execution procedure are following:

- judicial decisions against the public authorities shall be executed within 3 months;
- the execution documents against budgetary institutions shall be sent to the Treasury which informs the debtor thereof;
- if the debtor lacks funds in its account, it shall request the budgetary authorities to allocate the necessary budgetary funds to comply with the judgment;
- if the debtor fails to do so, the treasury office is empowered to freeze the debtor's account until the judgment is fully complied with.¹²⁶

More information on these issues is given in the Memorandum prepared by the Department for the execution of the Court's judgments.¹²⁷ The Memorandum presents the progress so far achieved by the Russian authorities, points at a number of outstanding questions and proposes further measures with a view of comprehensive solution of the problem.

3.2.3.2 Violation of the right to a court hearing or trial within a reasonable time

The first case in which the Court found a violation of the reasonable time requirement (article 6 of the Convention) was the case of *Kalashnikov v. Russia* (excessive length of criminal proceedings). Later, also, the problem of extensive length of procedure in civil cases has been identified by the Court as a systemic violation.

Judgments of the Court referring to the duration of the proceedings on criminal cases shows that the particular reasons leading to excessive length of the proceedings are the poor quality of work of investigative organs and excessive workload of courts of general jurisdiction. The national courts are forced to return criminal cases because of the poor quality of work of the investigative organs to rectify any shortcomings. Lack of

¹²⁶ Budgetary Code of the Russian Federation, Articles 241.2 -241.4 with amendment on 27.12.2005 Law No.197 Φ3 .

¹²⁷ CM/Inf/DH(2006)19 rev 3- Memorandum "Non enforcement of the domestic judicial decision in Russia: general measures to comply with the European Court's judgments" of 4 June 2007.

qualified subsidiary staff such as judges' assistants and secretaries has caused an overloading of the national courts.

Analysis of the judgments of the European Court of Human Rights referring to the duration of the civil proceedings points to:

- understaffing and the work overload of courts,
- lack of automatic time-limits,
- repeated procedural omissions,
- poor technical conditions of court buildings,
- numerous adjournments of hearings, due in particular to the failure to notify the claimants about the hearings in due time.¹²⁸

The Court has noted in its judgments that the Russian Federation has no effective means of legal protection against excessive delays in the court proceedings such as complaints to qualification boards of judges of various levels, complaints to the prosecution authorities about the duration of the legal process, as well as the lodging of suit about damages caused by the excessive length of the examination of the case.¹²⁹

To remedy the situation in civil cases, in January 2001, the Constitutional Court extended the possibility of establishing the fault of judges under Article 1070§2 of the Civil Code.¹³⁰ However, it limited judges' responsibility under this provision to the fault committed when taking procedural decisions, e.g. decisions adjourning or scheduling hearings. The damages, thus, caused shall be compensated by the Treasury on the basis of Article 1069 of the Civil Code. The Constitutional Court invited the Parliament to adopt special legislation providing courts competent to deal with these claims and a compensation procedure.

On March 02, 2005, the Russian authorities were invited to present an action plan with respect to the possible measures taken or envisaged, to ensure that the requirement of reasonable length of court proceedings is respected, and to set up adequate domestic remedies allowing victims to obtain compensation before domestic courts. An action plan has been awaited by the Committee of Ministers since March 2005.¹³¹

¹²⁸ See document List of cases pending for supervision of execution on www.coe.int/T/E/Human_Rights/execution/

¹²⁹ See Russian bulletin on human rights "*Systematic violations of the Convention on Human Rights and Fundamental Freedoms in the Russian Federation*" (Russian version), 2007, No.22.

¹³⁰ Article 1070§2 of the Civil Code provides that damages inflicted in the course of the administration of justice shall be compensated.

¹³¹ For more information, see Annotated Agenda of 997th meeting (DH), 5-6 June 2007/ Section 4.2 Individual and/or general measures.

Information provided by the Russian Federation to remedy the situation in criminal cases can be found in subsection 2.5.1.

3.2.3.3 Violation of the principle of legal certainty in connection with “nadzor” review of judicial decisions entered into force.

As it was illustrated in *Ryabykh* case, a violation of Article 6 takes place in some cases because of the quashing of the final judicial decision in the applicants' favour following application for a supervisory review (*nadzor*) lodged by state officials .

The previous Code of Civil Procedure did not contain a statutory limitation term relating to “nadzor” review (such review was possible any time after the court decisions had come into effect). In addition, the prosecution authorities and judges had full authority to order a “nadzor” review of the courts decisions on their own initiative. Under the new Code of Civil Procedure application for a supervisory review has to be lodged within a year.

As it was noted by the Committee of Ministers in resolution Res DH (2006)¹ the current law still does not allow parties legitimate reliance on juridical decisions that have become binding and enforceable.

See Subsection 2.5.2 of the thesis for reaction of the Russian Federation in regard to this systematic violation.

3.2.3.4 Conditions of detention in remand isolators: violation of the prohibition of inhuman and degrading treatment, as outlined in Article 3 of the Convention.

In the case of *Kalashnikov*, the Court investigated the conditions of detention in remand isolators for the first time. In its judgment the Court examined the condition of detention in the remand centre of Magadan (overcrowding of the cells, lack of ventilation and daylight, lack of sanitary conditions, etc.) and found that the applicant was held in improper condition over an extended period which constitutes an inhuman and degrading treatment. Following this case the Court passed more similar decisions.

The Russian Federation implemented a series of measures to improve the condition of detention in remand centers.¹³²

However, the report by the Commissioner for Human Rights for the Council of Europe on the results of a visit to the Russian Federation in June and September 2004 (CommDH(2005)2) highlighted that not all accommodations in detention centers has been renovated. In old quarters, used for detaining prisoners, he found overcrowding, dirt, and absence of adequate ventilation and daylight.

3.2.3.5 Unsubstantiated arrest and detention and unjustified length of detention

The problem of unsubstantiated detention (violation of Article 5 of the Convention) was first reflected in the judgment of *Smirnova v Russia*.¹³³ The Court subsequently passed a series of judgments that also broached this subject. It is necessary to note that the Court did not examine the quality of the Russian law that contains the basis for arrest and imprisonment, but criticized the Russian courts, which order detention as a pre-trial measure and take decisions on the length of detainment without any audible argumentation of their decisions. The Court also noted that the Russian courts violate the reasonable time for the investigation of the legality of detention without any justification.

3.2.3.6 Violation of the right to life and the prohibition of torture

Violation of the right to life was first found at in the first three “*Chechen*” cases from 24 February 2005.¹³⁴ In all cases the Russian Federation was accused of a violation of its procedural responsibilities to carry out an effective investigation of what caused the death of the applicants’ relatives (procedural violations of Article 2 and violations of Article 13). Another problem specifically noted in the *Chechen* judgments was a disproportionate use of force.

In regard to the implementation of these judgments in the national legal system, the Secretariat of DGII to assist the Committee of Ministers’ supervision of the execution of the Court’s judgments prepared a Memorandum which follows tree main avenues:

¹³² See Subsection 2.5.1.

¹³³ See *Smirnova v. Russia*, judgment of 24 July 2003, §70, 71.

¹³⁴ See *Chechen* cases in subsection 2.4.2.

- Improving the legal and regulatory framework governing the antiterrorist activities of security forces;
- Awareness raising and training of member of security forces;
- Improvement of domestic remedies: current Russian legislation and court practice in this respect is examined and certain solution suggested.

Since the events prescribed in the judgment, the Russian authorities enacted and /or amended a number of legislative acts which governs the action of the security forces. In addition, the Russian Federation adopted a series of other general measures such as publication and dissemination of the judgments, training in the Army, training of judges and prosecutors.¹³⁵

However, the violation of the right to life and prohibition of torture, as well as the lack of effective investigation, has occurred not only in Chechnya but in other regions of the Russian Federation. The Court found such violations in the case of *Trubnikov v. Russia*¹³⁶ (the lack of effective investigation brought the death of a prisoner) and in the case of *Mikheyev v. Russia*¹³⁷ (torture by the police with the aim of receiving a confession to a crime, and the lack of effective investigation into the claim of torture).¹³⁸

3.2.3.7 Concluding remarks

The arguments which were outlined above draws a conclusion that the Russian Federation does not fully comply with its obligation to prevent repetitions of violations under the Convention. It is also necessary to underline that the Russian Federation is only the State of the Council of Europe which has not ratified Protocol 14 of the Convention, which designed to improve and accelerate the execution of judgments.

As it was provided for in the Explanatory Report to Protocol 14 of the Convention:

“Rapid and adequate execution has, of course, an effect on the influx of new cases: the more rapidly general measures are taken by States Parties to execute judgments which point to a structural problem, the fewer repetitive applications there will be.

¹³⁵ See, for more details, Memorandum- Violation of the ECHR in Chechen Republic: Russia’s compliance with the European Court’s judgments.

¹³⁶ See *Trubnikov v. Russia*, judgment of 5 July 2005, §80-83.

¹³⁷ See *Mikheyev v. Russia*, judgment of 26 January 2006, §9-75.

¹³⁸ See Russian bulletin on human rights “*Systematic violations of the Convention on Human Rights and Fundamental Freedoms in the Russian Federation*” (Russian version), 2007, No.22.

The most important Convention amendment in the context of execution of judgments of the Court involves empowering the Committee of Ministers to bring infringement proceedings in the Court against any state which refuses to comply with a judgment."

3.4 Case law of the Court and national jurisprudence

3.4.1 Implementation of the Court's judgments in the national courts

It was previously noted in this paper that application of the case law of the Court in the national courts is important to prevent similar violations of the Convention.

It follows from the Constitution of the Russian Federation,¹³⁹ that national courts in the Russian Federation can apply provisions of the Convention as well as its judicial practice without incorporation of separate law regulating these issues. Due to the monistic legal system of the Russian Federation, there are no obstacles, after ratification of the Convention, for the national courts to employ the Convention and the Court's interpretation thereof in their domestic judgments.¹⁴⁰ Thus, the case law of the Court can be directly applied by the Russian courts.

Moreover, the Constitution of the Russian Federation has recognized supremacy of international treaties over the federal law by stating the following in Article 15§ 4:

"If an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply".

A similar position of international law within the national system was given by the Federal law No.101- Φ3 on the status of international treaties of the Russian Federation.¹⁴¹

In the federal constitutional law "On the judicial system of the Russian Federation",¹⁴² Article 3 states:

"The unity of the court system of the Russian Federation is secured by:..... -the application by all courts of the Constitution of the Russian Federation, Federal Constitutional laws, federal laws, generally recognized principles and norms of international law and international agreements of the Russian Federation.."

¹³⁹ Article 15 §4 of the Constitution.

¹⁴⁰ G. Danilenko, *Implementation of the International law in CIS countries*, 1999, p.52.

¹⁴¹ Adopted on July 15,1995.

¹⁴² Adopted by the Council of Federation on December 26,1996, available online: <http://www.supcourt.ru/EN/jsystem.htm>

According to this article, the national courts are under the obligation to implement generally recognized principles, norms of international law and international agreements of the Russian Federation.

It is therefore interesting to see to what extent national courts apply the Convention and interpretation of it by the Court.

3.4.2 Application of the Convention and the Court's case law in the judicial practice of the Russian courts

The main elements ruling the mechanism of interpretation of the Russian law are Decrees of the Plenum of the Supreme Court and the Plenum of the Supreme Arbitration Court. Those decrees under Article 126 and Article 127 of the Constitution of the Russian Federation¹⁴³ provide guidance to the courts on the issues of proper application of the legislation of the Russian Federation. It appears that Decrees of the Plenum of the Supreme Court and the Plenum of the Supreme Arbitration Court play a similar role as the judgments of the Court of Human Rights. They provide guidance to the national courts on correct application of the rule of law.

The first decree of the Plenum of the Supreme Court which was partly concerned the application of the Convention was adopted on October 31, 1995.¹⁴⁴ Later the Plenum of the Supreme Court issued Decree No.5 which was dedicated to the application of international law.¹⁴⁵ Decree No.5 adopted in 2003 emphasized the direct application of international law and its supremacy over the national law. The Supreme Court in this decree noted that the national court should consider in their practice Article 31§3(b) of the Vienna Convention on the Law of Treaties.¹⁴⁶ It was also recommended to the judiciary department of the Supreme Court in cooperation with the Representative of the Russian Federation to the Court of Human Rights to inform regularly on judicial practice of the Court, and to the Russian Academy of justice to improve studies of international law for the judges of the national courts. In another decree of the Plenum of the Supreme Court

¹⁴³ Article 126-“*The Supreme Court of the Russian Federation shall offer explanations on judicial practice issues; Article 127- The Supreme Arbitration Court of the Russian Federation shall offer explanations on questions of judiciary practice.* Similar provisions contains the federal constitutional law “on the judicial system of the Russian Federation” of 31 December 1996- Article 19§5 and Article 23§5.

¹⁴⁴ Decree of the Plenum of the Supreme No.8.

¹⁴⁵ Adopted on October 10,2003.

¹⁴⁶ Article 31 “General rule of interpretation” of the Vienna Convention on Law of Treaties, paragraph 3 states: “*There shall be taken into account, together with the context and further p.(b) provides: “any subsequent practice in the application of the treaty which establish the agreement of the parties regarding its interpretation.*”

No. 23 of 19 December 2003, the Supreme Court stressed the need of application in domestic judgments provisions of the Convention and its interpretation by the Court.¹⁴⁷

However, the practice could be different than the perfect theory. As professor Danilenko G. mentioned in his work:¹⁴⁸

“Actual status of the international law in CIS countries is, will be continued to be, and determined not only by the relevant constitutional clauses but also by willingness of the domestic courts to rely on that body of law”.

By September 2004, the Convention was applied in 54 decisions of the Constitutional Court from total 116 decisions taken since the Russian Federation ratified the Convention in 1998. Application the Court’s case law took place in 12 decisions in those 54 cases where the Constitutional Court applied provisions of the Convention.¹⁴⁹ It is necessary to point out that the claims addressed by the Constitutional Court concerned the protection of human rights. They were based on the Constitution of the Russian Federation and theoretically, the Convention could be applicable in each case. Indeed, the Constitutional Court started applying the provisions of the Convention even before the ratification of the Convention by the Russian Federation, but the court has always lacked in its judgments references to the case law of the Court.

In this context, the representative of the Russian Federation at the Court, Laptev P. noted:

“We, however, must accept that provisions of the Convention could not exist without their correct interpretation by the Court of human Rights”.¹⁵⁰

As for the judicial practice of the Supreme Court of the Russian Federation regarding the application of the Court’s case law, the analysis of the judicial practice of the Supreme Court¹⁵¹ showed that there were 3911 cases evaluated by September 2004 from which only 12 judgments made references to the provision of the Convention, eight judgments contained the Supreme Court’s “assessment” of compliance with the Convention and in four cases the courts briefly quoted the arguments of an applicant based on the Convention without any evaluation.¹⁵² In those eight mentioned cases not a single reference to the case law of the Court was found. The manner of the implementation is brief and imprecise. In some judgments only the number of the article is cited, and at best

¹⁴⁷ Decrees are available (in Russian) on www.consultant.ru/online and on www.subcourt.ru.

¹⁴⁸ See Danilenko G (1999) p.51.

¹⁴⁹ See Burkov A. *Application of the European Convention for human rights in the Courts in Russia*, Russian version, 2006, p 31.

¹⁵⁰ See Laptev P. *Justice in Russia and European Court of human rights* Russian version, 2004 p.32.

¹⁵¹ See www.subcourt.ru

¹⁵² A.L. Burkov (2006) p.72

the content of the provisions of the Convention are quoted.¹⁵³ The situation did not improve either in 2005 or in 2006. The Supreme Court did not apply the case law of the Court even once in 2005 and in 2006, it took place only in two cases.¹⁵⁴

The judicial practice of the arbitration courts of the Russian Federation including the Supreme Arbitration Court, the Moscow city Arbitration Court, the Arbitration Court of the Moscow region as well as the Moscow Federal District Court and North-West district Court, is similar to the jurisprudence of the Supreme Court of the Russian Federation. From the total number of 38,068 judgments of those courts, there were just 23 cases where the Convention was mentioned.¹⁵⁵

However, in the judicial practice of the district and regional courts, which is not officially published, the improvement of situation on the matter can be seen. An example of it can be demonstrated in practice of the NGOs, the Glasnost Defense Foundation (hereafter “the Foundation”) and Ural Center for Constitutional and International Protection of Human Rights “Sutyajnik” (hereafter “the Center “Sutyajnik”). The Foundation had organized a strategic litigation campaign with the aim to employ Article 10 of the Convention (Rights to Freedom of expression) in all defamation cases where its lawyers were involved. It was noted that in the legal proceedings only the Convention was cited; there was no reference made to the case law of the Court. The Foundation’s lawyers submitted a comprehensive memorandum with direct relevance of the Convention and the case law of the Court to convince the court that the Convention has the status of federal law. Attempts to implement the Convention without taking into account the case law of the Court would be pointless. Later the Foundation obtained the judgments of the district courts which did contain the citing of the precedents of the Court.¹⁵⁶

As it was observed further in 2005 and in 2006, the district and regional court’s practice is improving in the application of the case law of the Court.¹⁵⁷

¹⁵³ For more information, See www.sutyajnik.ru/rus/echr/rus_judgments/sup_court/5_03_2003_platki.html

¹⁵⁴ The problems of implementation of norms of the convention and judgments of the European Court”, analysis of the research center “Demos“, Russian version, 2006.

¹⁵⁵ Evaluated by September 2004. See A.L.Burkov, (Russian version), 2006 p. 73.

¹⁵⁶ See A.L.Burkov, (Russian version), 2006 p. 52-55.

¹⁵⁷ The problems of implementation of norms of the convention and judgments of the European Court”, analysis of the research centre “Demos“, Russian version, 2006.

4 Failure to abide by judgments and decisions

4.1 Obstacles on the execution of judgments and decisions

In most of the judgments of the Court against the Russian Federation, special concern has been expressed on the legislation of the Russian Federation and incorrect interpretation thereof. The judgments of the Court demonstrate that violations of the Convention takes place, frequently, because of absence of legislation for the particular situation, or because the present legislation violates the rights of the applicant and there is a need to amend it.

The amendment of legislation or the adoption of new law which could satisfy the purpose of the Convention, sometimes appears to be difficult not just because of the long-time requirements but also for the other reasons. One of the reasons is that the scope of the Court's case law is not always clear. Due to a casuistic approach of the case law of the Court and summary motivation of their rulings, it is often rather difficult to draw conclusions that apply beyond the specific case in question.¹⁵⁸ Resolution 1226(2000) "Execution of the judgments of the European Court of Human Rights" of the Parliamentary Assembly" states:

"the problems of implementation are least seven fold: political reasons; reasons to do with reforms required; practical reasons relating to the national legislative procedure; budgetary reasons; reasons to do with the public opinion; judgments drafted in a casuistic or unclear manner; reasons relating to the interference with obligation deriving from other institution".

The increasing number of rulings pronounced by the supervisory organs can lead to difficulties keeping track of the actual state of the case law. This could demand ever-increasing specialization, including an efficient Convention related documenting system, to stay regularly updated. Due to the mentioned unclear scope of the case law, it is required to have increasing levels of expertise to ensure accurate interpretation of the Court. The Government should have an organizational structure to develop and implement such

¹⁵⁸ Vijgen M. *Implementation of the ECHR in Dutch legislation: that job is jobbed!* (1999), p.226.

expertise.¹⁵⁹ Lack of information on new developments in the execution of judgments and in the Court's case law as well as limited educational trainings on international law for the legislative, judiciary, executive organs, do not prevent similar violations of the Convention. Especial attention, therefore, should be paid to those issues to ensure Russia's compliance with the judgments of the European Court.

As for the incorrect interpretation of the Court's case law by the national courts of the Russian Federation, it should be mentioned unwillingness of the national courts to apply the provisions of the Convention and case law the Court. During the first four years after Russia's ratification of the Convention, judges of the district courts in the Russian Federation hearing provisions of the Convention cited by the parties to the dispute could response with silent smile or even protest. They could say that international law does not have anything in common with the Russian domestic legal system.¹⁶⁰ However, from 2004, argumentations with references to the Convention and case law of the Court have been accepted by national courts with less protest. The main problems in the process of implementing the Court's judgments in judiciary practice of the Russian Federation are:

a) refusal of the Courts to apply the provision of the Convention and case law of the European Court relaying more on the legislation of the Russian Federation;

Some of the national courts do not refer to the Convention provisions and case law of the Court due to non – existence of the regular judicial practice to apply the Convention and the Court's case law. They mostly consider that the national law and domestic case law will be enough to resolve the dispute.¹⁶¹ If the judgments of the Supreme Court and the Supreme Arbitration Court and the Constitutional Court would contain references on case law of the Court and the Convention, it would be a good example for other national courts.

b) limited knowledge of the case law and the special nature of the precedents of the European Court, including norms of international law;

Special studies concerning the Court's case law as well as training courses regarding the norms of international law are frequently organised by the Russian authorities for judges of the national courts. As the Representative of the Russian Federation at the European Court of Human Rights Laptev P. noted in his interview to the

¹⁵⁹ Vijgen M (1999), p.227-229.

¹⁶⁰ See A.L.Burkov, (Russian version, 2006) p. 83

¹⁶¹ See A.L.Burkov (Russian version, 2006) p. 89-91.

“*Rossiiskaya Gazetta*”¹⁶² courses have been taken since 2000. However, the practice shows that those studies have not improved the situation. In addition, not all judges had a chance to participate in such programmes and only few law enforcement officials were enabled to take part in them. Therefore, there is still a need for effective and compulsory studies on international law for judges of the national courts of all levels in order to apply the case law of the Court and the Convention itself.¹⁶³

c) unofficial translation of the judgments of the European Court.

The formal languages for the all judgments of the European Court are English and French. No judgments of the Courts are officially translated into Russian. Some of the Russian courts, in order to use the case law of the Court, require the confirmation on correct translation of the judgments by the state's notary offices. Others consider the translation of the judgments of the Court by the Office of the Representative of the Russian Federation to the European Court of Human Rights as an official.¹⁶⁴

It is important to point out that the translations of the judgments by the Office of the Representative of the Russian Federation in the European Court of Human Rights are not published in official publications (except for the first few rulings, whose translations were indeed published in “*Rossiiskaya gazeta*” – the official newspaper for publication of legal acts). At the same time, all Russian legal acts must be published in the official sources – otherwise those legal acts cannot be administered. Thus, the lack of official publications of the translated decisions of the European Court prevents them from being treated by judges as a source of law during court hearings.¹⁶⁵

All above noted factors brings to the conclusion that obstacles to the proper execution of the judgments of the Court will be dissolved if the Russian authorities take into account in their investments the effective education of the legislative, executive and judiciary organs and public information regarding international law. In addition, the Russian authority could adopt regulations introducing responsibility for non-compliance of the State organs with judgments of the Court.

¹⁶² Published on April 6, 2005.

¹⁶³ A.L.Burkov (Russian version, 2006) p. 84-87.

¹⁶⁴ A.L.Burkov (Russian version, 2006) p.88-89.

¹⁶⁵ See Paper drafted by the research center “Demos” for May 2007 Russia-EU Human Rights Consultations.

4.2 Non-compliance with judgments and decisions

The supervisory task of the Committee of Ministers¹⁶⁶ could take the form of monitoring legislative or administrative reforms instituted by the States in response to a finding of a violation of the Convention. Under Article 41, the Committee deals not only with judgment of the Court finding a violation of the Convention but also with judgment striking a case from the Court list if the parties have agreed to a friendly settlement.¹⁶⁷ The Committee does not regard its function under Article 46§2 as having been exercised until it has received information that States have properly implemented all necessary individual and general measures, and just satisfaction has been paid to the injured party.

There are several ways that the Committee of Ministers uses to influence governments of the States to comply with the judgments of the Court. The first of these is confidential peer pressure. The ministers and their permanent representative are obliged to attend the meetings of the Committee of Ministers. No one is satisfied with the fact that the State they are representing is a continuing violator of the Convention. This type of pressure should not be underestimated. Additionally, on more formal and public level, the Chairman of the Committee can make use of bilateral letters to notify the government concerned of the Committee's views on any particular matter.¹⁶⁸

In recent years, the Committee of Ministers has started to use the interim resolutions to directly address the responsible State authority to resolve the problems which led to the violation of the Convention. Moreover, there is the careful attention of the Council of the Europe's Parliamentary Assembly to the work of the Committee of Ministers. In many cases the use of Parliamentary questions may elicit information about the progress of a case and highlight a State's failure to adequately cooperate.¹⁶⁹

The question is what happens if the State does not enforce the judgments of the Courts in its domestic order.

According to the Article 3 of the Council of the Europe membership in the Council of Europe take place if the State accepts

“the principles of rule of law and the enjoyment by the by the all person within its jurisdiction of human rights and fundamental freedoms..”

¹⁶⁶ Article 46§2 of the Convention provides: “*The judgments of the Court shall be transmitted to The Committee of Ministers which shall supervise its execution.*”

¹⁶⁷ Zwaak L. (1999) p.84

¹⁶⁸ The European Convention on Human Rights, Jakob & White, Forth Edition, Oxford press, 2006, p 502-504.

¹⁶⁹ See coe.int/T/E/Human_Rights/execution/.

And further Article 8 states:

“Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.”

Under the new rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements,¹⁷⁰ Rule 11 has introduced the “infringement proceedings” which was not envisaged in the previous Rules of the Committee of Ministers of 2001. Those infringement proceedings refer to the fact that they will take place in very exceptional circumstances.

Particularly, it will happen when contracting Party refuses to abide by the final judgment of the Court in a case to which it is a party. Decision on this issue will be adopted by a majority vote of two third of the representatives entitled to sit on the Committee. If such decision is adopted, the Committee refer to the Court the question whether that Party has failed to fulfil its obligation under the Convention. This will take a form of an interim resolution. Such proceedings will be initiated only after formal notice to the Party concerned on the decision adopted by the Committee, which will be an interim resolution that has to be given ultimately six months before the lodging of the proceedings.

So far, in the history of the Council of Europe, the Committee of Ministers has never made use of its powers to suspend a member State, although it came close to doing so twice in 1970 concerning Greece¹⁷¹ and most recently in 2001, regarding Turkey's refusal to compliance with judgments of the Court.¹⁷²

As speaking about Russia's non compliance with judgments of the Courts, it should be mentioned the interim resolutions adopted by the Committee of Ministers in respect to the case of *Ilaşcu and others* against Moldova and Russia. As it was discussed above, the violation of the Convention in this case ended on June 4, 2007.¹⁷³ The Committee has decided to suspend its examination of this case and to resume it after the final determination of the new application lodged by the injured parities to the European Court of Human Rights.

¹⁷⁰ Adopted on May 10, 2006 at the 964th meeting of the Ministers' Deputies. Rules based on Protocol 14 of the Convention adopted on 13 May 2004, Article 16.

¹⁷¹ See Resolution Res DH (70)1.

¹⁷² See Resolution Res DH (2000)105. See, also *The European Convention on Human Rights*, Jakob & White, Forth Edition, Oxford press, 2006, p 506.

¹⁷³ See Resolution ResDH(2007)106.

5 Summary and Conclusion

Under the Convention on Human Rights and Fundamental Freedoms States are obliged to make reparation for the damages by mean of just satisfaction. If just satisfaction could not redress the situation, in many instances it is required to adopt individual measures, most commonly, the reopening of domestic judicial procedure. In many cases, the States are also obliged, under Article 46 §1 of the Convention, to abolish or amend the law, or to change jurisprudence to ensure that the relevant violation of the Convention is not repeated. These measures are normally referred to general measures.

The Russian Federation ratified the Convention in 1998. By doing so it made the Convention directly applicable in the domestic legal system. Accepting the compulsory jurisdiction of the European Court of Human Rights, the Russian Federation by virtue of Article 46§2 of the Convention must abide by the judgments of the European Court. However, implementation of the judgments of the Court in the Russian legal order needs improvements. Although the payment of just satisfaction to the injured parties is executed, it is in some instances paid with delays.

The reopening of domestic proceedings is available according to the Russian law under the Code of Criminal Procedure and Code on Arbitration Procedure. However, the Code of the Civil Procedure is confusing due to an unclear provision on reopening of a final judicial decision under newly discovered circumstances, which does not include the finding of the violation by the judgments of the European Court.

The case law of the European Court shows that the Russian Federation has systematic problems which lead to the similar violations of the Convention. It can be noted that in most of the cases against the Russian Federation the Court found a violation of the following provisions of the Convention: Article 6 (Right to fair trial) and Article 1 of Protocol 1 (Protection of property) due to the non –enforcement of final domestic judicial decisions, Article 5 (Right to liberty and security) due to the unsubstantiated arrest and detention and unjustified length of detention and Article 3 (Prohibition of torture).

The Russian Federation attempts to adopt general measures to avoid similar violations but it seems that their efforts do not entirely satisfy the spirit and purposes of the Convention.

Unfortunately, despite legislation that prescribed the application of the Court's judgments, national courts of the Russian Federation are applying provisions of the Convention and the case law of the Court very rarely. This also will lead in many cases to similar violations of the Convention.

All above mentioned factors give an answer to the question which was addressed in the presentation of the topic. Thus, it could be concluded that more efforts and willingness of the Russian authorities on compliance with the judgments of the European Court are required in order to ensure the protection of rights and freedoms of each human being under the jurisdiction of the Russian Federation.

Bibliography:

Part I – BOOKS AND ARTICLES:

- Alkema, E., “*Implementing the decision of the supervisory bodies of the EHCR exploring present possibilities*” IN Barkehuysen T.” *The Execution of Strasbourg and Geneva Human Rights Decision in the National Legal Order*, Kluwer Law International, 1999, p.89-99;
- Burkov, A.L, in Russian /*Application of the European Convention for human rights in Courts of Russia/ (Применение Европейской Конвенции по правам человека в судах России)*, Yekaterinburg press, 2006;
- “*Implementation of the Convention for protection of Human Rights and Fundamental Freedoms in Russian Courts*”, Russian law: theory and practice, No.1- 2006,p.68-76;
- Burkov, A.L, Demeneva, A., “*Probal legal consequences of the Rakevich v. Russia*”,the Human Rights Law Review 2003-2004, Human Rights Law Centre of the School of the law, University of Nottingham, 2004, p.7-12;
- Barkhuysen T., Michiel van Emmerik, “*Improving the implementation of Strasbourg and Geneva decisions in the Dutch legal order: reopening of closed cases or claims of damages against the state*” IN Barkehuysen T. “*The Execution of Strasbourg and Geneva Human Rights Decision in the National Legal Order*, Kluwer Law International, 1999, p.3-27;
- Cassese, A., “*International law*”, Second edition, Oxford press, 2005;
- Cameron, I., Eriksson M., “*An introduction to the European Convention on Human Rights*”, Fifth edition, Iustus Forlag AB, Uppsala, 2006;
- Drzemczewski, A., “*European Human Rights Convention in Domestic Law A Comparative Study*, Oxford press, 1985;
- Danilenko, G., “*Implementation of the international law in CIS States: Theory and*

Practice”, European Journal of International Law, 1999, p.51-69;

Ferschtman, M., “*Reopening of judicial procedure in Russia: the way to implement the further decision of the ECHR supervisory organs?*” in Barkehuysen T.”
The Execution of Strasbourg and Geneva Human Rights Decision in
the National Legal Order, Kluwer Law International, 1999, p.123-135;

Gomien, D., “*Short guide to the European Convention on Human Rights*”, Council of Europe Publishing, 1998;

Janis, M., Kay, R. and Brandley, A., “*European Human Rights Law. Text and Materials*”, Oxford, 2000;

Jurgens, F., *Report on the Execution of judgments of the European Court of Human Rights*, 2000, HRLJ 275;

Harman, J., “*Complementary Mechanisms within the Council of Europe. Perspective of the Committee of the Ministers*”, 2000, 21 HRLJ 296;

Harris, D.J., Warbrick, C., and O’Boyle, M., “*Law of the European Convention on Human Rights*”, Second edition, London: LexisNexis UK, 2005

Laptev, P., in Russian /*Justice in Russia and European Court of human rights/ /generally recognized principles and norms of International law, International Treaties in practice of the Constitutional justice/ materials from the Confer., 2004 (Российское правосудие и Европейский суд по правам человека//Общепризнанные принципы и нормы международного права, международные договоры в практике конституционного правосудия);*

Leach, P., “*Taking a Case to the European Court of Human Rights*”, Oxford, 2005;

Lester, A., Pannik, D., “*Human Rights Law and Practice*”, London, 1999;

Lambert-Abdelgawad, Elisabeth, “*The Execution of Judgments of the European Court of Human Rights*”, Strasbourg: Council of Europe Publ., 2002;

Mowbray, A., “*Cases and materials on the European Convention on Human Rights*”, Second edition, Oxford University press, 2006;

- *The Development of Positive Obligations under the European Convention on Human Rights*, Oxford, 2004;

- Ovey, C., White Robin C., *“Jakob&White: The European Convention on Human Rights”*, Forth edition, Oxford press, 2006;
- Ried, K., *“A Practitioner’s Guide to the European Convention of Human Rights”*, London, 2004;
- Rowe, N., Schlette, V. *“The protection of Human rights in Europe after the Eleventh Protocol to the ECHR”*, 1998, 23 EL Rev HR/1;
- Schermers, H., *“European Remedies in the Field of Human Rights”* in C. Kilpatrick, N. Novitz, and P. Skidmore, *“The Future of Remedies in Europe”*, Oxford, 2000, p. 205;
- Shelton, D. *“Remedies in International Human Rights Law”*, Oxford University Press, 1999.
- Vijgen M. *Implementation of the ECHR in Dutch legislation: that job is jobbed!* IN Barkehuysen T. *“The Execution Strasburg and Geneva Human Rights Decision in the National Legal Order*, Kluwer Law International, 1999,p.223-233.
- Zwaak, L., *“The implementation of the decisions of the supervisory organs under the European Convention on Human Rights”* IN Barkehuysen T.” *The Execution Strasburg and Geneva Human Rights Decision in the National Legal Order*, Kluwer Law International, 1999, p.77-88;
- Russian bulletin on human rights* (Russian version) - published by the Institute of Human Rights, Moscow, 2007;
- “International law of human rights”* edited by Addo, M. K.,Aldershot: Ashgate, 2006;
- “Theory and Practice of the European Convention on Human Rights”* edited by the Pieter van Dijk, Freid van Hoof,Arjen van Rijn, Leo Zwaak, Antwerpen-Oxford, Intersentia, 2006;
- “The Execution of the Strasburg and Geneva Human Rights Decisions in the National Legal Order”* edited by Tom Barkhuysen, Michiel van Emmerik and Piter Hein van Kempen, Kluwer Law International, 1999;

Part II- OFFICIAL DOCUMENTS

A. Table of cases (The European Court of Human Rights HUDOS Database)

Case of *Belilos* v. Switzerland, judgment of 29 April 1988;
Case of *Tolstoy Miloslavsky* v. the United Kingdom, judgments of 30.10.1995;
Case of *Paramichalopoulos and Other* v. Greece, judgment of 31.10.1995;
Case of *Remli* v. France, application no. 16839/90, judgment of 23.04.1996;
Case of *Scozzari and Giunta* v. Italy, judgment of 13.07.2000;
Case of *Kalashnikov* v. Russia, judgment of 15.07.2002, final on 15.10.2002;
Case of *Smirnova* v. Russia, judgment of 24 .07.2003, final on 24.10.2003;
Case of *Ryabykh* v. Russia, judgment of 24.07.2003, final on 03.12.2003;
Case of *Timofeyev* v. Russia , judgment of 23.10.2003, final on 23.01.2004;
Case of *Ilaşcu and others* v. Russia , judgment on 08.07.2004 ,Grand Chamber Judgment on 08.07.2004;
Case of *Yemanakova*, judgment of 23/09/2004, final on 02/02/2005
Case of *Yaroslavtsev*, judgment of 02/12/2004, final on 02/03/2005
Case of *Isayeva* v. Russia, judgment of 24/02/2005, final on 06.07.2005;
Case of *Isayeva, Yusupova and Bazayeva* v. Russia, judgment of 24.02.2005, final on 06.07.2005;
Case of *Khashiyev and Akayeva* v. Russia, judgment of 24.02.2005, final on 06.07.2005;
Case of *OOO Rusatomme* v. Russia, judgment of 14.06.2005, final on 14.09.2005;
Case of *Znamenskaya* v. Russia, judgment of 02.06.2005, final on 12.10.2005.
Case of *Yavorivskaya* v. Russia, judgment of 25.07.2005, final on 24.10.2005;
Case of *Trubnikov* v. Russia, judgment of 05.07.2005, final on 30.11.2005;
Case of *Suntsova* v. Russia, judgment of 17.11.2005, final on 17.02.2006;
Case of *Shofman* v. Russia, judgment of 24.11.2005, final on 24.02.2006;
Case of *Mikheyev* v. Russia, judgment of 26.01.2006, final on 26.04.2006;
Case of *Menesheva* v. Russia, judgment of 09.03.2006, final on 09.06.2006;

B. The Committee of Ministers' Documents

Recommendation (2000)2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, 19 January 2000;

Recommendation Rec(2002)13 of the Committee of Ministers on the publication and dissemination in the member states of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights, 18 December 2002;

Recommendation Rec(2004)4 of the Committee of Ministers on the European Convention on Human Rights in university education and professional training, 12 May 2004;

Recommendation Rec(2004)5 of the Committee of Ministers on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down by the European Convention on Human Rights, 12 May 2004;

Recommendation Rec(2004)6 of the Committee of Ministers on the improvement of domestic remedies, 12 May 2004;

Resolution Res(70)34 -Legal and financial consequences of the withdrawal of Greece from the Council of Europe, 27 November 1970;

Resolution Res(2002)58 of the Committee of Ministers on the publication and dissemination of the case-law of the European Court of Human Rights, 18 December 2002;

Resolution Res(2002)59 of the Committee of Ministers concerning the practice in respect of friendly settlements, 18 December 2002;

Resolution Res(2004)3 of the Committee of Ministers on judgments revealing an underlying systemic problem, 12 May 2004;

Interim Resolution DH (2001) 80/ 25 July 2001;

(Document was not found in the database)

Interim Resolution DH (2003)123 concerning the judgment of the European Court of Human Rights of 15 July 2002, final on 15 October 2002 in the case of Kalashnikov against the Russian Federation, 4 June 2003;

Interim Resolution DH (2000)105 concerning the judgment of the European Court of Human Rights of 28 July 1998 in the case of Loizidou against Turkey, 24 July 2004;

Interim Resolution ResDH(2006)1 concerning the violations of the principle of legal certainty through the supervisory review procedure (“*nadzor*”) in civil proceedings in the Russian Federation - general measures adopted and outstanding issues, 8 February 2006;

Interim Resolution ResDH(2005)42 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of Ilașcu and others against Moldova and the Russian Federation, 22 April 2005;

Interim Resolution ResDH(2005)84 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of Ilaşcu and others against Moldova and the Russian Federation, 13 July 2005;

Interim Resolution ResDH(2006)11 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of Ilaşcu and others against Moldova and the Russian Federation, 1 March 2006;

Interim Resolution ResDH(2006)26 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of Ilaşcu and others against Moldova and the Russian Federation, 10 May 2006;

Interim Resolution CM/ResDH(2007)106 concerning the judgment of the European Court of Human Rights of 8 July 2004 (Grand Chamber) in the case of Ilaşcu and others against Moldova and the Russian Federation, 12 July 2007;

CM/Inf/DH(2005)20E / 23 March 2005

Supervisory review (nadzor) procedure in the Russian Federation: Prospects for reform in line with the ECHR requirements - Materials of the high-level seminar organised by the Directorate General of Human Rights (DG-II) in the context of the implementation of the European Court's judgment in Ryabykh v. Russia case, Strasbourg, 21-22 February 2005

CM/Inf/DH(2005)30E / 01 June 2005

New working methods for supervision of the execution of the Court's judgments (Human Rights meetings) - Assessment of the implementation of the new working methods since their introduction in April 2004 (CM/Inf(2004)8 final) and proposals for further improvement;

CM/Inf/DH(2006)45E / 01 December 2006

Round table on non-enforcement of court decisions against the state and its entities in the Russian Federation: remaining problems and solutions required - Conclusions of the Round Table of 30-31 October 2006 and Press release [982 meeting];

CM/Inf/DH(2006)19rev3E / 04 June 2007

Non-enforcement of domestic judicial decisions in Russia: general measures to comply

with the European Court's judgments - Memorandum prepared by the Department for the execution of the European Court's judgments (Application of Article 46 of the ECHR) [997 meeting];

CM/Inf/DH(2006)32rev2E / 12 June 2007

Violations of the ECHR in the Chechen Republic: Russia's compliance with the European Court's judgments - Memorandum prepared by the Secretariat of the DGII to assist the Committee of Ministers' supervision of the execution of the European Court's judgments (Article 46 of the ECHR);

CM/Inf/DH(2007)30revE / 13 June 2007

Non-enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court's judgments - Memorandum prepared by the Department for the Execution of the judgments of the European Court (Application of Article 46 of the ECHR) [997 meeting];

CM/Inf/DH(2007)33E / 28 June 2007

Round Table on “Non-enforcement of domestic courts decisions in member states: general measures to comply with European Court judgments” - Conclusions of the Round Table in Strasbourg, 21-22 June 2007.

C. Documents of the Parliamentary Assembly of the Council of Europe

Resolution 1226 (2000) of the Parliamentary Assembly of the Council of Europe on 28 September 2000;
Resolution 1268 (2002) of the Parliamentary Assembly of the Council of Europe on 22 January 2002;
Resolution 1297 (2002) of the Parliamentary Assembly of the Council of Europe on 23 September 2002;
Resolution 1381 (2004) of the Parliamentary Assembly of the Council of Europe on 22 June 2004;
Resolution 1411 (2004) of the Parliamentary Assembly of the Council of Europe on 23 November 2004;
Resolution 1516 (2006) of the Parliamentary Assembly of the Council of Europe on 2 October 2006.

Recommendation 1477 (2000) of the Parliamentary Assembly of 22 September 2000;
Recommendation 1546 (2002) of the Parliamentary Assembly of 22 January 2002;
Recommendation 1576 (2002) of the Parliamentary Assembly of 23 September 2002;
Recommendation 1684 (2004) of the Parliamentary Assembly of 23 November 2004;
Recommendation 1764 (2006) of the Parliamentary Assembly of 2 October 2006.

Reports of the Parliamentary Assembly of the Council of Europe:

Document Ref.: [Doc. 8808](#) - Execution of judgments of the European court of Human Rights, 12 July 2000.

Document Ref.: [Doc. 9307](#) - Implementation of decisions of the European court of Human Rights, 21 December 2001.

Document Ref.: [Doc. 9537](#) - Implementation of decisions of the European court of Human Rights by Turkey, 5 September 2002;

Document Ref.: [DOC. 9537](#) - Implementation of decisions of the European Court of Human Rights by Turkey, 21 September 2002;

Document Ref.: [DOC. 10192](#) - Implementation of decisions of the European Court of Human Rights by Turkey, 1 June 2004;

Document Ref.: [DOC. 10351](#) - Implementation of decisions of the European Court of Human Rights, 21 October 2004.

Document Ref.: [DOC. 11020](#) - Implementation of judgments of the European Court of Human Rights. 18 September 2006.

Document Ref.: AS/JUR(2005)55r - Implementation of judgments of the European Court of Human Rights. Supplementary introductory memorandum, December 2005.

Document Ref.: AS/Jur(2005)32 and AS/Jur(2005)35 - Implementation of Judgments of the European Court of Human Rights [Introductory Memorandum](#) (pdf format), June 2005.

D. Other documents

Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention ([CETS No. 194](#))

The Explanatory Note on the Issue of Signing the European Convention for the Protection of human Rights and Fundamental Freedoms by the Russian Federation, January 30, 1996

Part III- INTERNET

Electronic resources of international law	www.asil.org/resource/treaty1.htm www.legislationline.org
Council of Europe	www.coe.int
Council of Europe treaties	http://convention.coe.int
European Court of Human Rights	www.echr.coe.int
Committee of the Ministers	http://www.coe.int/t/CM/Home_en.asp
Legislation in Russia	www.consultant.ru
Supreme Court of Russian Federation	www.subcourt.ru
Government of the Russian Federation	www.government.gov.ru/
Legislative organs in Russia	www.duma.ru
NGO “Sutyajnik”.	www.sutyajnik.ru
Research center “Demos”	www.demos-center.ru
Institute of Human Rights	www.hrights.ru